

DEBATES
OF THE
House of Commons,

From the Year 1667 to the Year 1694.

COLLECTED BY THE
Hon^{ble} ANCHITELL GREY, Esq;

WHO WAS
Thirty Years Member for the Town of DERBY;

CHAIRMAN of Several COMMITTEES;

AND
Decyphered COLEMAN'S LETTERS for the Use
of the HOUSE.

IN TEN VOLUMES.

VOLUME VII.

LONDON:

Printed for D. HENRY and R. CAVE, at St John's Gate.
and J. EMONSON, in St John's Square.

MDCCLXIII.

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1764-74, ———,
wife of
Thomas Hollie,
of London.

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Saturday, March 15, 1678.

THE House met, according to the Prorogation, when his Majesty, in the Lords House, spoke to this effect:

“ My Lords and Gentlemen,

“ Though this hath been a very short recess, yet there are some doubts whether you can take notice of what I said at the opening of this Parliament, in point of form; therefore it is necessary that I recommend to you what I and my Lord Chancellor said to you the other day, as if we said it now. The rest I refer to the Lord Chancellor.”

The Lord Chancellor, [Earl of *Nottingham*,] then spoke as follows:

“ My Lords, and you the Knights, Citizens, and Burgessees of the House of Commons,

“ Since it hath pleased the King to refer you all to what he lately said at the opening of this Parliament, it will concern us all to take it into our most serious thoughts, and to enter upon the matter therein recommended to us, that so we may proceed effectually in that great work for which we were called, without being diverted from it by any consideration whatsoever. For if this Parliament succeed not well, if it do not quiet and compose the minds of all the people; it will be

thought the most unaccountable thing in the world, considering the great preparations the King hath made for it, and those excellent dispositions of mind he brings towards it. Wherefore, that no time may be lost, his Majesty commands you, Gentlemen of the House of Commons, to proceed immediately to your choice of a Speaker, and his Majesty will expect that he be presented to him on *Monday* morning, at ten of the clock."

The Commons then returned to their House to chuse their Speaker.

Lord *Ruffel*.] Gentlemen, I hope the occasion of the late unhappy difference about the choice of our Speaker is removed by the Prorogation. And I hope now that no ill persons, by tricks, can create a misunderstanding betwixt the King and his people, and hinder the happy effects of this Session. And since the first step we are to make is to chuse a Speaker, I shall humbly recommend Mr Serjeant *Gregory* as a fit person.

Mr *Sacheverell*.] I stand not up to oppose the Motion, but for what every honest Gentleman ought to do. I blame no man that differs from me, or goes according to his judgment. I differ from those who think that this point of right, of chusing our Speaker, &c. is now quiet, and I stand up only to give my reason for it, why I differ, and then I will withdraw. I differ, because that in honour we cannot leave Mr *Seymour*, since he may suffer by being named Speaker by us. Next, if our right be not maintained, we have a Precedent upon us. Next, if there be no expedient, &c. then the Motion is warrantable; but I know not of any.

Lord *Cavendish*.] By the last Prorogation, the King seemed rather to yield to us, by admitting that the point in difference could not be decided any other way. The King's denial of the Speaker that we chose is not entered into the Lords Book. Therefore, in respect to the affairs of the Nation, let us chuse our Speaker, and I second the Motion for Serjeant *Gregory*.

Serjeant *Gregory*.] I humbly thank you for your good opinion of me; but when I consider the weight of your Debates, which require a person of the greatest experience and

and parts, my time of sitting here has not been above a year, and my experience so little that you may suffer in your affairs; and I come with the greatest disadvantage imaginable to succeed a person of so much experience. Pray consider of it, and chuse a more experienced person.

Then Lord *Ruffel* and Lord *Cavendish* took him by the arms, and led him to the Chair; which he did not in the least resist.

Serjeant *Gregory*.] Seeing that you will not admit my excuse, I humbly beg leave, that I may crave his Majesty's pardon and excuse at the Lords Bar.

The effect of the Speaker's Speech when he was presented to his Majesty.

"May it please your Majesty,

"In obedience to your command, the Commons have proceeded to the choice of a Speaker, and have chosen me; who, conscious of my own inabilities, and weakness, for so great a service, considering the great and weighty matters likely to be at this time before them, have done all I could to prevail with them to excuse me, which they have refused to do, and have renewed their commands upon me to accept of it. In obedience to them I come hither, to offer myself freely to serve your Majesty and the Government; and for your Majesty's grace and favour I do in all humility lay myself at your Majesty's feet."

The effect of the Lord Chancellor's Speech, in answer, &c.

"Mr Speaker, The excuse you have made cannot discredit you with his Majesty; especially coming with such credentials from the House of Commons. Moderate parts, accompanied with such modesty, which hath been called a form in others, is in you a settled habit; and is more becoming than when it wants that ornament. His Majesty doth ratify and confirm you Speaker."

The effect of the Speaker's second Speech.

"I am all obedience to your Majesty, and I think it no longer my duty to excuse myself, and I shall, with all diligence, to the best of my power, set myself to serve your Majesty and the Government in that station as well as I can, and so I shall likewise your Majesty on all other accounts; and in the name of the Commons of *England*, I request your Majesty for Access to your Royal Person, Freedom of Speech, and from Arrests; and

that your Majesty will put a favourable construction upon all our Debates."

The effect of the Lord Chancellor's second Speech.

"His Majesty doth, with great chearfulness, confirm all your Privileges; and "Freedom of Speech," a jewel of unknown worth, he thinks safe when trusted with his House of Commons; and is satisfied that you will not see it abused. As for "securing your Persons from Arrests," it shall be preserved so inviolably to you, that his Majesty will think it the highest contempt of his Royal authority in any body that shall go about to disturb you, whilst you are serving him. And as for "Access to his Person," his Majesty denies it to no man, and to be sure you will find it favourably extended to you. For the creature he makes by his Power he will always support by his Goodness."

Then the House came down, and the Speaker took the Tests &c. and Oaths in his Chair. The rest of the Members [took them] this day and the next*.

Then, according to Custom of Parliament, the Session was opened by reading a Bill.

Wednesday, March 19.

Mr *Vaughan*.] That Religion that absolves not the Subjects from their obedience to their Prince, and teaches Loyalty, and not Rebellion, is the Protestant Religion, which we profess. The great Plot was to subvert that Religion. I move "that a Committee may inspect the Journal," that we may know how we left affairs the last Parliament, and that we may the better know what we have to do.

Mr *Powle*.] I must take notice of the murder of Sir *Edmundbury Godfrey*, that, when the last Parliament met, the lights of that horrid action were obscure; but by their diligence they laid open the great practices of the Popish party, and their great correspondences both abroad and at home, and to be put in the posture of a military force, but, by God's great providence, they were discovered. Besides that dark practice brought to light,

* All the foregoing occurrences are erased in the printed Journal.

of a great Minister of State, (*Danby*;) when we gave money to engage in an actual War against *France*, and at the same time he was merchandizing for Peace. And when all these things were brought to a crisis, and when the discovery of the Plot and other things were almost brought to perfection, just then there came a Prorogation of that Parliament, and soon after a Dissolution. What were the motives of other men to advise the King to do it, I will not examine, but it seems to me, that the King would not, in the great affairs now depending, trust the advice of others, but such as had the approbation of the Country by another choice. I hope this Parliament, now met, will do great things for the King and Kingdom. The King calls for your assistance, in the first place, for discovery of the Plot, and therefore if you lay on upon the scent of the Plot where you left off in the last Parliament, I fear the abrupt breaking off that Parliament hath so darkened things as never to be recovered. But whoever shall be detected to be guilty of conspiring against the life of the King, I hope he shall never be pardoned. I have opened something only in general, and I would have a Committee appointed to search the Journals, and report how you left things, for the sake of some Gentlemen who were not here the last Parliament.

Sir *Thomas Lee*.] I move to have your Books examined as to those things relating to the Treasurer which you have sent up to the Lords, and to other things not yet sent up relating to the five Lords accused of the Plot, of which Mr *Oates* and Mr *Coleman*'s letters are concurrent testimony. I desire the matter may be reported; for Gentlemen that were not here then, and who live in the country, will scarcely believe what they will find.

Sir *John Knight*.] You see, by *Coleman*'s letters, that the King and Parliament have been betrayed for these seven years last past, and I would have them reviewed again, and that they were to raise a standing Army with *French* money, and to have no Parliament for three years.

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Sir Francis Winnington.] Consider the most methodical way to come to your end. First, consider that it is necessary to see your Journals, what you have done. To look into the particulars of the Plot, and the discovery of it, is one thing; and suppressing it is another; and it is a great work. But if you inspect the Journal, there will be occasion for Gentlemen to graft upon it as they please. Every man is full of suppressing the Plot, and the preservation of the King's person. And when you have inspected the Journal, you may the more orderly proceed in what you have to do.

Resolved, That a Committee be appointed to inspect the Journals of the last Session of the last Parliament, and to prepare and draw up a state of the matters then depending [and undetermined, and the progress that was made therein,] and report the same to-morrow morning.

Mr Swayne.] When there are many ill things, and one that contains all the ill things, I would consider that. Our lives, estates, and the Government. Though this is but one single thing, yet all is in the belly of it. I would single out that. Do you know that Justice is delayed? I would have no man stand before you against the King and Kingdom. Go upon that first.

Colonel Birch.] I know no reason why we should alter the method of Parliament. Leave the Committee at large, without tying them to the Plot, or any thing else, and you may command what particulars you will go upon first. I would have the matters brought before you, the reasons and inducements, &c. and then the Letters, &c. and all things will be ready for you to proceed upon.

Thursday, March 20.

Sir Francis Winnington reports [from the Committee, the search of] the Journal, &c.

Sir Thomas Lee.] Though the Report be not brought up to the table, yet it ought to be entered into the Journal, and not omitted, as the Report about *Mr Prance* was. I would not have this so left out as that was, after *Sir John Trevor* had made you the Report.

Resolved,

Resolved, That the Report [be re-committed, and brought in, in writing, to the end the same may] be entered [in the Journal.]

Sir Thomas Clarges.] I would have the Chairman of the Committee assist and inform the Clerk how to make the entry, much of the Report being from his memory. When it is entered upon our books, we then have a good title to it, which, by a Dissolution of the Parliament, we have not else. I would have you order the Report to be fairly written, and read at the table, and then entered.

Mr Powle.] Consider what you will do with this Report. The Proceedings of the last Session of the last Parliament were so honourable, as not to be paralleled in any time. And yet, in the height of their Proceedings, they were prorogued. Let us go on, therefore, where they left off, and the first thing you do, pray let it be to look upon the examinations relating to the Plot. They are all ready, and several persons, since the Dissolution of the Parliament, have given in farther evidence. Those Witnesses may be sent for, in order to the preparing the charge for the Lords tryal in the *Tower*. I think some Witnesses may be brought to the Bar, to inform you here; but some will be proper to be concealed till the Lords tryal. Only I move now that you will nominate a Committee to draw up the Impeachment against the Lords.

Colonel Birch.] I would have every Gentleman here have the whole matter before him. When we were prorogued, it was in that nick of time when Witnesses were offering themselves to give evidence in the Plot. I would have them sent for, to have the body of the thing laid open before the whole Kingdom, that they may see what grounds you go upon; and I would have some of the evidence come to the Bar to-morrow morning.

Sir Harbottle Grimstone.] In the last Parliament, money was raised, and an Army was quickly up, and we know what Officers were for them. We saw that there was no War intended against the *French*. We then considered what was to be done next. We therefore went about disbanding the Army, for our fears and doubts were of a standing Army. You know, we then fell into the consideration

of disbanding them, but the money we gave for that purpose was employed for keeping them up, so that in that matter the Report is shorter; that is, we were plainly cozened. But that's past, and rather than they should pay themselves, we resolved to give money, but never to have it paid into the *Exchequer*, but into the Chamber of *London*. And then in ten or twelve days you would have had no Army; but they who dissolved that Parliament hindered the passage of that Bill. I would have that matter reported out of the Journal.

Sir *Thomas Clarges*.] Half a dozen years ago the King was Arbitrator of the Triple League, and, for ought we know, he is now at the mercy of the King of *France*. He was let into the seventeen Provinces by our assistance, and men were sent over to him, contrary to the opinion of the Nation. Then, the last Parliament, we were invited to raise an Army, and make War with the *French*; and a Privy Counsellor here was so hasty in it, that "he would rather be guilty of twenty murders (*Coventry*) than that it should not be a War*." Another talked of "taking the King of *France* by the beard;" and an Army of thirty thousand men was raised, to prosecute this War, and then four days after the Act was passed, &c. the Lord Treasurer enters into a treaty with the *French* King for six millions of livres *per annum*, &c. to keep this Army up, and to take away our Laws and Liberties. His Letters show you that the *French* King should have Peace if he would pay so much for it. Were not then the King and we betrayed in this? And, by God's great mercy, this misery was published to you under the Treasurer's own hand, and, for ought I know, the King and Government might have been subverted by it. I desire that, as soon as you please, Doctor *Tongue* and Mr *Oates* may give you their information relating to the Plot.

Mr *Garroway*.] I would, in this matter of the Plot, first name your Committee of Secrecy; and, that no Gentlemen may take exceptions, I would have no new

* See Vol. V. p. 9.

Members excluded. They are of great integrity and abilities, and there is no reason why you should exclude them. The old Members will help them with their papers, and would be glad to have themselves assisted; the practices of some men may defeat you without great care, for the Plot is still on foot. Now, whether will you examine the Witnesses here, or at the Committee of Secrecy?

Mr *Vaughan*.] I had rather that this Parliament prosecuted the Plot than the last; for this brings their interest with them, the last came to make an interest here.

The Committee of Secrecy was named [to take information and prepare evidences, &c.] and three to be of the quorum.

[Doctor *Tongue*, Mr *Oates*, and Mr *Bedlow* were ordered to attend at the Bar the next day, and a Message was sent to the Lords, reminding them of the Impeachment of the Earl of *Danby*, and desiring that he might be committed to safe custody.]

Friday, March 21.

Doctor *Tongue*, at the Bar, gave a long account of his observations of the Papists before the discovery of the Plot, and, upon them, he was induced to print his book of the *Jesuits'* morals, which so enraged the *Jesuits*, that they employed Mr *Oates* to come over to kill him. He was ordered to give in a copy of his information, and it is mostly printed upon several occasions.

Mr *Oates*, at the Bar, gave a large narrative of the beginning and proceeding of the Plot; since penned by himself, and printed. Then he complained, "that he was under several discouragements; as for instance, from the Earl of *Danby*. Mr *Oates* being in the *Privy Garden*, the Earl of *Danby*, passing by, said, "There goes one of the Saviours of *England*, but I hope to see him hanged within a month." Then he informed the House, "that five years ago he had some knowledge of the Plot by one *Everard*, a prisoner in the *Tower*; where he was kept for four years and a half for endeavouring to discover the Plot. That Mr *Edward Sackville*, a Member of the House, did revile him, being the King's evidence, and swore, "God damn him, it was no Plot, and they were sons of whores who say that there is a Plot, and that *Oates* was a lying rogue."

"That Mr *Henry Goring*, the younger, met him in the Lobby, when he was newly elected, and desired him to use his interest to get Sir *John Gage* bailed." He replied, "that he would not use his interest to get Traytors bailed, and that he was no man to do it, because he had accused him." Who replied, "that Mr *Oates* was a rascal,

a rascal, and a lying rogue," and he swore "by God, he believed not Mr *Oates*, though the House did," and called him, "base, impudent fellow." Mr *Oates* returned Mr *Goring* ill language, but left that to Mr *Goring* to repeat. He spoke of it in the country, "that the King had justified him when he had abused Mr *Oates*," and leaves it to Mr *Goring*'s honour to deny it*." He added, "I desire to be removed from *Whitehall*, and to make use of the liberty the Law allows me. I have been threatened with carrying to the water-side, and to be sent down the River, and can give good reason why they intend me for a sacrifice. I have been baffled, and abused, and hindered from serving my country. *The King holds his Crown by the same Title I hold my Liberty*"—These last words gave offence to many. *He withdrew.*

[Debate.]

Mr *Sackville*†.] As to what Mr *Oates* has informed you of what I should say, no man will think me guilty of so much folly, as to say "there was no Plot; " but I have said, "I believe not all *Oates* has said of it," when I consider his education. I have heard Doctor *Lowther* say, "that had he not been told how impudent *Oates* was, he could not have believed it." *Oates* said "he was a better man than myself, and that I was a rascal." I have always said "that I did believe the Plot, and that, if it were not a Plot, Mr *Oates* deserved to be hanged."

Mr *Pilkington*.] The King and Kingdom are obliged to Mr *Oates* for his discovery; but if he be not upheld by encouragement, we may be lost. I would have every man, that is an *Englishman*, consider, that, if Mr *Oates* has been abused, they who have wronged him may be made examples to deter others.

Sir *Nicholas Carew*.] You are well moved, but several persons have been accused by Mr *Oates*, and but one of them in the House. I would therefore appoint a time for your Member present to justify himself, and for Mr *Oates* to prove his charge.

Colonel *Birch*.] I have often heard, in the country, that two or three have done such things as these, but

* It appears by the Journal, that Mr *Oates* informed also against Sir *John Robinson*, another Member.

† Second son of the Earl of *Dorset*: He died soon after this Debate.

could

could I have got the persons proved, I would have informed you. I desire that business may be examined, and that Mr *Oates* may produce his testimony; and for what Mr *Sackville* has to say, that he produce his; and so we may have a due examination of it. It may else go through the whole Kingdom, to the prejudice of the whole Parliament, and let it be examined at the secret Committee.

Ordered, That Mr *Oates's* information be heard at the Bar [on Monday next.]

Mr *Bedlow* at the Bar.] The only danger I am in is of my guards at *Whitehall*. I always understood that guards were not for my interruption, but safety. The discoveries I have made have not been little ones, since the last Parliament. But I am much hindered by my guards, who are so many spies upon me, and not for my safety, and if they like not any man that comes to me, they have orders to shoot him; and they would do it, and did present their guns. When I know myself in a safer condition, I shall say more. I have been urged to revoke what I have already said, with promises of reward. But if I will not, there are oars ready at *Whitehall* Stairs, and I shall be sent away without discovery. But before I make any farther discovery, I desire to be put in a place where I may be safe from danger; any where but *Whitehall*. If the King be not safe there, I am sure I cannot think myself so. In interval of Parliament I am confined and checked. Upon my own expence, I have got several Priests, and could get a hundred more, if I had encouragement to bear my charges. I will not wrong any body, but, since Mr *Arthur's* papers were seized, I have had discouragement; and for revealing the murder of Sir *Edmundbury Godfrey*. I shall be better prepared tomorrow to say more. But as for the Plot, I desire to cease farther discovery of circumstances, which I shall reserve for a more proper time. *Then he read the former papers he delivered in the last Parliament*, and undertakes the proof of all of it. And I could have done it much more; but I have been kept more like a prisoner than an evidence. I have been much discouraged since my discovery of the murder of *Godfrey*, for I have not received the encouragement in the Proclamation. Poor people, who helped me in it, have lost the relief of Catholics, that kept them. If I could have had the 500*l.* promised in the Proclamation, I would be ready to give it to the poor people. I have scarce enough allowed me to keep me alive, and that's all; but I have nothing to maintain my witnesses. When I come to confront the persons accused, I shall say a great deal more, not by hearsay, but from their own mouths to me, or writings; and particular circumstances. I was proffered
money

money from my Lord Treasurer for a copy of what I had said against him and the Queen. A Gentleman from the Treasurer would have corrupted one of my servants. And other attempts [have been made] upon me, which I shall in time declare. There are too many of the King's enemies for me to be safe in *Whitehall*. Colonel *Howard*, Lord *Newport*, Prince *Rupert*, and the Duke of *Monmouth* are kind to me. When I am safe, and out of their reach, I will say more. I was told, by a great man, "that I might go to *Sweden*, *Jamaica*, *Switzerland*, or *New England*; if I would retire, I might be rewarded." Witnesses should converse together in matters of this great moment; but if I must not, I am ready to serve the Kingdom in thralldom, as well as in liberty. *He withdrew.*

Sir *Thomas Clarges*.] What concerns Mr *Bedlow*'s accusation of the traytors must be a work of time; but what concerns the King I would take into consideration presently. *Bedlow* was to have had 500*l.* for his discovery of the murder of *Godfrey*, by the Proclamation, and it was a plain discovery. Therefore I move "that some Members may acquaint the King with it," that some course may be taken for it, that the Proclamation may not be a mockery, and the public credit of the nation vilified; and the 20*l.* for discovery of a Priest not to be a mockery, or a vision, and the Nation contemned.

Mr Secretary *Coventry*.] There are several Petitions for this 500*l.* Mr *Bedlow* gave the first information, and what overtures were made of it to him; but, as the Proclamation runs, he must make it out who murdered *Godfrey*. In the mean time, some of the neighbours of Mr *Prance* gave information, "that *Prance* had a halberd with him, &c. and a horse, which he used not to have;" and this gave suspicion. The Lords sent for *Prance*, and upon his first examination he was very likely to make it out. My Lord Treasurer doubted that Mr *Bedlow*'s information proved it not. And, says another Gentleman, "I produced *Prance*;" so the thing could not be decided.

Sir *William Pulteney**.] I am much troubled that there is so much discouragement without doors, and more,

* Grandfather to the present Earl of *Bath*. He died in 1691.

that

that there is so little encouragement within doors. I move, therefore, that the Proclamation, &c. may not be turned into a mockery. *Bedlow* was willing, if he might have had the 500*l.* to have distributed the money amongst the rest of the pretenders to the discovery of *Godfrey's* murder, &c. but because he has not a title to it in the strict formality of Law, shall he have nothing? They are Petitioners for the Laws, the benefit of every common subject. I never heard that witnesses have had guards upon them. Mr *Oates* has proffered security to prosecute, &c. and I think truly that they lie under great discouragements, and long attendance. They have showed themselves faithful; therefore I move now, for the King and Kingdom, that, where you shall find an obstruction to their liberty, you will direct an Address to the King that it may be taken off, and that they and the Nation may not be discouraged.

Sir Robert Howard.] In the last Parliament, thousands of pounds were talked of in the House for rewards to the discoverers of *Godfrey's* murder. Then 500*l.* was promised in the Proclamation, and now it is fallen to nothing. I have heard that it was agreed amongst the discoverers to share the 500*l.* and yet it seems they shall not have it.

Colonel Birch.] I am amazed, that, when the former Parliament talked of 5000*l.* now they at *Whitehall* hesitate at 500*l.* *Bedlow* said, when he saw *Prance* in the Lords Lobby, "This is the man that shewed me *Godfrey's* body murdered; seize him." I hope the House will think 500*l.* too little a reward, and that the House will, rather than not, double it ten times. All the pretenders to the discovery, &c. meet with equal success, and that is, they have not a penny!

Mr Secretary *Coventry.*] By the Proclamation, 500*l.* was due to the discoverer, and then it is not in the power of the King's Council to give away *meum* and *tuum*. It was ordered that the Lord Treasurer should take the advice of the Judges of it, and the King is bound to it, as the sense of the Proclamation shall be judged.

Sir Thomas Clarges.] The Honourable Person makes
a moot

a moot point in Law of it, and it may be put off from Term to Term, and at last become an Exchequer-Chamber argument amongst the Judges. Such a Proclamation is always to be taken in the largest sense, as to the reward. The Judges may give a flattering opinion on it. I would address the King about it.

Sir Richard Cust.] *Bedlow* was the first discoverer of the murder. *Prance* comes in only *se defendendo*.

An Address was voted accordingly, [desiring that his Majesty would cause the 500*l.* reward to be paid to Mr *Bedlow*, &c.]

Ordered, That Mr *Oates*'s Information against the Lord Treasurer be referred to the secret Committee.

Mr Bedlow at the Bar.

The Speaker.] The House has taken notice of what fell from you, about a reward to go abroad, to absent yourself from giving any farther evidence against the Lords, &c.

Mr Bedlow.] I shall make more discovery of it in the close Committee. My full discovery of all things cannot be expected till the Lords tryals. I am sorry I should accuse any worthy man, who should say "there was no Plot," and "that we were great rogues." I must accuse Mr *Edward Sackville* for saying so. A Gentleman come out of *France*, Sir *Robert Welsh*, can give you great light, if he may be heard at your Bar. I desire that another Gentleman may be called in, who would have made discoveries four or five years since about the Plot, and for a reward was put into Prison; his name is Mr *Everard*, and he is now in the Speaker's Chamber. *He withdrew.*

Lord Cavendish.] If there be so dangerous a person near the King, as to fustle the evidence of the Plot, he should be removed. I would graft something upon it.

Sir Francis Winnington.] I have the honour to be named of the close Committee, but I would have this tampering with *Bedlow* declared to you now. If there be such a person near the King, to bribe and corrupt Evidence against his life, &c. every good subject would have him removed from the King. I would ask *Bedlow* singly the names of the persons, that a hearsay-time and place may not bring all your Evidence to nothing, by such corruptions, &c. I move, as for your immediate service

vice only, to have the persons named, and then do farther what you please.

Mr *Bedlow* at the Bar.

The Speaker.] The House is tender of your safety, and likewise of the King's Evidence, that it should not be weakened, and therefore require you to declare who would have corrupted you to have given copies, &c. to the end that no persons may entrap you by counter-proofs. First, the House would know whether any person has threatened, persuaded, or offered you reward to go beyond sea? And next, by whom you was so persuaded or threatened?

Mr *Bedlow*.] For the first, I have been threatened, &c. and I have been promised a good reward, &c. and "that I had better make sure of myself beyond sea, if the Parliament be prorogued." I was proposed *Sweden*, &c. and had two days time to consider of it, &c. I was a great rogue at first, and should have been a greater rogue now to be corrupted. I was resolved not to be frightened nor corrupted. I was told "there should be a pair of oars at *Whitehall* Stairs, and a yatch at *Greenwich* should send me away, if I would not accept of what was proposed me, or I should have my throat cut."

The Speaker.] If that person that threatened you were known, we should then know whom to accuse.

Mr *Bedlow*.] I desire to have no converse, and to be assured I shall not come to *Whitehall*, unless I am commanded by the Council; and till I be secured of my safety I cannot name the person. *He withdrew.*

Sir *Francis Winnington*.] This last business is of great importance. It not only requires your consideration, but that it be speedy. *Bedlow* will not name the person, till he be secured of his safety; and it is very reasonable he should. I propose, that he may have assurance in general, of his safety, if he name the person. But whether he shall first name the person, and then you'll secure him; either way is very easy.

Lord *Cavendish*.] I would have *Bedlow* called down, and signify so much to him.

Mr *Bedlow* at the Bar.

The Speaker.] The House is sensible of your fears, and the danger you are in, and assure you, that, if you'll be
free

free and open in your discoveries, the House will not rise till they have taken care for your safety.

Mr *Bedlow*.] My danger is so great, that the Yeomen of the Guard would not part with me, till the Serjeant of the House would give them security to deliver me again to them. The King is more courteous and kind to me than I could expect from a King to a subject; but when I am gone from him, somebody has power to do me ill offices. I think myself safe in the Members Houses, or in the City, but I am sure the King is not safe in *Whitehall*, and then I am sure I cannot be so. *He withdrew.*

Sir *Francis Winnington*.] I moved even now, that, if it were not *Bedlow's* inclination to name the person, till he was assured of his safety by the House, he should not be urged to it, because of his apprehension that he is in danger, if he should, being near the water, &c. and he proposes a remedy. No person, I believe, here, would willingly go away without hearing the person named that the King stands in so great danger from. I propose, therefore, that some of the Privy Council may go to the King, and desire him, that, because of *Bedlow's* apprehensions of himself, he may be in the custody of your Serjeant; and that is, of the House.

Sir *Thomas Meres*.] Before that be, I move that you may have some sort of security from *Bedlow*, that he will prosecute the persons he accuses, &c.

Colonel *Titus*.] Here are some things that I understand not, in this matter. I see not how *Bedlow* can be in greater danger than he is in already. To take him from the King's guard into your protection—I like not that. There is no protection but the King's, and no body mistrusts the Duke of *Monmouth*. I would therefore address the King, “that *Bedlow* may be put into the care of the Duke of *Monmouth*,” without mentioning any sort of guards. And a Gentleman says to me, “that *Bedlow* will be well satisfied with this course.”

Resolved, That an humble Address be made to his Majesty, by some of the Members of the Privy Council, that the care of Mr *Bedlow's* safety may be immediately recommended to his Grace the Duke of *Monmouth*.

Sir

Sir *Christopher Musgrave*.] *Bedlow* ought not to capitulate with you ; but what we think to be his security, he ought to think so too ; therefore I think you fairly moved “ for the Duke of *Monmouth*,” &c. And then call him in, to declare who gave him these threats and offered him bribes.

Sir *Robert Howard*.] If any man has threatened him, that man is known to him, and that man knows it. A great man said, “ he would send *Oates* and him down the river.” *Bedlow* has named the man in the wrong place, not in the right. Satisfy *Bedlow* that you have offered him great security ; that is, the Duke of *Monmouth*. He has said, “ that a great person has threatened him, &c.” That person knows it, and you do not ; therefore he is unsafe without naming him here.

Sir *William Pulteney*.] The crime that the Lords are accused of is Treason, and the person is a Traytor, for all are principals that aid and abet Traytors. As *Bedlow* is a subject to the King, he is bound by his allegiance to name him that has tampered with him, and his safety will be much the greater, when he has named him. Therefore I would send for *Bedlow* down, and charge him upon his allegiance to name the person, and tell him, that you will take care of his safety.

Mr *Bedlow* at the Bar.

The Speaker.] The House has considered the way and method how you may be secured, and you are not to distrust them ; they will find out the safest way for you, if you will acquiesce in it. It is not safe for you to conceal this matter, in point of Law, and therefore the House will have you name the persons.

Mr *Bedlow*.] I scruple nothing but my own safety ; but this is a near point, to hazard my own safety. What I have said of threats and rewards, &c. my Lord Treasurer, in his own closet, said to me, from his own mouth, and gave me two days time to consider of it. This was done in the interval of the last Parliament, before the call of the other. I have no more to say, but humbly to desire the House to secure me from the power of so great an enemy as my Lord Treasurer.

Sir *Francis Ruffel*.] Lord *Dumblaine* (the Treasurer's son) is gone out of the House.

Colonel *Titus*.] If my own father was in the case that Lord *Dumblaine's* is, I would do as he has done, to give my father notice of what is informed against him. The Laws of the House, and the Laws of the land, cannot contradict the Laws of nature.

There was another distinct Order for Mr *Oates*, the same with that of Mr *Bedlow*.

Colonel *Titus*.] You may remember, that, at the first discovery of the Plot, the last Parliament, those who gave evidence in it were sworn before Justices of the Peace of the House; you have Members that are so now, and you may do so now.

Sir *Francis Winnington*.] The Lords in the *Tower* were seized by my Lord Chief Justice's Warrant, although it was in Parliament-time, and committed to the *Tower*, where they are now. That having had that good effect then, now, before we go, it may be done—And you may question the evidence, though you cannot give an Oath. Let so much be given upon Oath by *Bedlow* as he declared at the Bar.

Sir *William Pulteney*.] In the last Parliament the crimes were the same; but now the crime is depending in an Impeachment, already exhibited; yet, if you command me to take the information, I'll obey.

Serjeant *Stringer* informed the House, that he had taken Mr *Bedlow's* examination, to this effect: "The Lord Treasurer asked him "Whether he would revoke his evidence against the Queen?" He answered, "he could not revoke his evidence." The Treasurer told him how safely he might do it. "Let him ask a good sum of money, and go beyond sea, and those in the Popish countries would be his good friends on this occasion, &c. Or if he were afraid of Papists, he might go into his own country, and buy a ship, and go where he pleased, and those who permitted him to go away, would secure his passage, and this was the way for him to make his fortune." And as the Treasurer was talking with his son, Lord *Latimer*, about his election, he said to him; "Mr *Bedlow* had been once a rogue, but would be so no more." He said to him, "he cared not for his discovery of this, which

which if he did, there was a yatch ready to send him far enough off." And from that time he was kept with a straighter guard than before."

Mr *Bedlow* at the Bar.

The Speaker.] The King has returned a gracious Answer to the request of the House in your behalf. He has expressed his apprehension of the considerableness of your evidence. Your service has been considerable; and the King will take care for your good usage and safety, and has passed his royal word for it, the greatest security that can be given.

Mr *Bedlow*.] I desire to return my humble thanks to his Majesty for his gracious favour to me, and I hope his Majesty may know so much, that I am humbly thankful.

Saturday, March 22.

Mr Secretary *Coventry* acquainted the House, That, according to their command, he had waited on his Majesty with their Address about the paying Mr *Bedlow* 500*l.* as the first discoverer of the murder of Sir *Edmundbury Godfrey*, who returned answer, "That he would take order to have it paid accordingly."

Then the Black Rod summoned the House to attend the King immediately in the House of Lords, where the King said:

"My Lords and Gentlemen,

"I should have been glad to see you had made any good progress in the matters I called you for. I perceive that your proceedings against my Lord Treasurer have hindered you therein. I am therefore now come to put an end to that business, such as I hope will be to your satisfaction. I have given him my Pardon under my Broad Seal, before the calling this Parliament, for securing both his life and fortunes, and if there should happen to be any defect therein, in point of form or otherwise, I will give it him ten times over, rather than it should not be full and sufficient for the purpose I design it. I never denied it to any of my servants or Ministers, when they quitted their places, as Lord *Shaftsbury* and the Duke of *Buckingham* well know. Besides, I must inform you, that there are great mistakes in those matters concerning him. For the Letters were written by my order. And for the concealing the Plot it was impossible, for he had heard nothing of that but what he had immediately from myself. I have dismissed him my Court and Councils, and not to return. Public business presses hard, and therefore I recommend them to you to go speedily upon them."

Debate.

Mr Bennet.] As there has been too much heat used here formerly, so I hope this House will not be too cool now. If Pardons go on at this rate that the King has told us, we are in a desperate condition. In *Spain*, when a Don is sent to a Government, and is accused of ill administration, the Court squeezes some money out of him, and he is pardoned, and the next Don that governs does the same, and so thereby their Government is become most despicable. *France* is grown great by a contrary method. There is a Chamber of Accounts, and what the Officer has got more than the usual perquisites and profits of the place he must refund, and that goes on towards the War. Our case is much worse. When a Minister falls, as in Lord *Clarendon's* case, there was an Act of Banishment, and now, in the Treasurer's case, a Pardon. The Lawyers can best tell you whether this Pardon is good in Law. Instead of squeezing a Minister that has been faulty, he goes away with 247,000*l.*—An Army raised—And the Fleet unpaid, with Popish Captains in it! When he put the Papists in, then the Plot opened upon him. We shall be still worse, if this Minister rides off thus unpunished, and it will be always thus, whilst, after an Impeachment of High Treason, any man shall go at large. It is for the safety of the King and the Nation, that a Minister be afraid of this House. If you let this Minister go thus, three years hence you may have such another, and, in time, we shall be all beggars.

Sir George Hungerford.] Suppose the Treasurer be commanded by the King to do an ill thing, as the writing those Letters to Mr *Montagu*, &c. let him plead his Pardon at his tryal. We are not to take notice of it till then.

Mr Wogan.] As the matter stands upon Impeachment, the Pardon may be pleaded. Such an Impeachment or information he must plead his Pardon for, at his arraignment, and not before. We cannot take notice of it. Matter of fact cannot be pleaded against matter of record. We ought therefore

therefore to desire the Lords, that he may be secured to answer his charge.

Sir *John Knight*.] In the Treasurer's last Letter of 25th *March*, *Monf. Barillon*, the *French Ambassador*, and he, made up a Peace, when that Letter was written without the King's direction. When a man comes to be tryed, then is his proper time to plead his Pardon. This man must come to tryal, to show the world, how ill a Minister he has been to the King. All things have been done by him, and not by the King and Council. Therefore, pray go on with the Articles of Impeachment, and let him plead his Pardon upon his tryal, and show himself a Traytor to both King and Kingdom.

Sir *Nicholas Carew*.] If you should go by Address to the King, &c. as Sir *Robert Markham* has moved, let it go with a representation, in what condition the Nation is in. We have neither ships, money, stores, nor alliances, that I know of.

Mr *Booth*.] I think this is the first time, that either any King, or this King, sent for a House of Commons to attend him about such a business as this. I will not say that this is crossing us in these great matters, but it looks like it. The King has told us, "that it is usual for him to pardon his servants when he discharges them, &c." If it be a custom, it is an ill one, and the worst that can be. But if such Pardons be justifiable, they are not so in this man's case. No story can parallel the villanies and wickednesses of this man. The King tells us, "he would have us mind the great business of the Nation:" You have no greater business than this. If these Pardons are thus obtained, it will be such an encouragement to rogues! If the King will give us up, let us do our duty notwithstanding.

Mr *Leveson Gower*.] If the Speaker had remembered all the King's Speech, he would have reported all. The King said, "he has given this Lord his Pardon before the Parliament met, and has done no more than he did to the Duke of *Buckingham* and Lord *Shaftsbury*." And I think, if he be so removed, as you are told, by the King, that

the Nation is not in danger, and the King says, "he will pardon him again and again."

The Speaker.] I will not say, that the King did not say the words of "pardoning him again and again," but, on my credit, I do not remember them.

Mr *Powle*.] The King said "all those that had quitted his service he gave Pardons to, as you'll find *Buckingham* and *Shaftsbury* had." But, "that he would pardon him again and again," I did not hear.

Sir *Charles Harbord*.] It is ordinary for a Minister or Secretary of State to say, "Sir, I am going off from your service. Pray let me have your Pardon." Lord *Bacon*, *Michell*, *Mompesson*, Lord *Middlesex*, Lord *Suffolk*, had Pardons. But did the King ever pardon any one after an Impeachment was against them? This way of pardoning (an Impeachment depending) is of the most dangerous consequence in the world, both to King and people. I have said this fifty years ago. In the last King's time, projects and monopolies flew about, and I was troubled about them; those reduced the King, the best of Kings, and perhaps of men, to own them at the Council-Table. It is a destruction to the Laws of the Kingdom, and of the people. Takeaway the hearts of the people, and you ruin the King in countenancing these things. When the Treasurer of the Kingdom disposes of the public treasure, for the King's recreation, still it is *pro bono publico*. It is *crimen læsi imperii* to destroy the Treasury, which is for safety of the people. How shall the Commons be able to support the King, that he may aid his Allies abroad, when the Treasury is wasted? Whoever does this, commits Treason against his allegiance. I move, that you will make a remonstrance of the State of the Kingdom.

Sir *Henry Beaumont*.] I am glad to find reasons and arguments the same to day as they were yesterday. I am glad no crime is too big for this House to punish. If the Treasurer be not *suspended* in this sense, I hope he may be in another.

Sir

Sir *Thomas Clarges*.] I would have you represent to the King all the evils that may issue from this Pardon. The King in his Speech, at the opening of the Parliament, says, "that we were best able to vindicate him from the calumny put upon him by the worst of men." Nothing can make the King more happy, or shine in greater lustre, than his Parliament. This is no factious Parliament; no Bands of Pensioners are here. Here the King's sceptre is of gold, and not a rod of iron—And the King shines in his greatest lustre. Though the King has pardoned my Lord Treasurer, the like was never done in any memory, when the whole body of the Kingdom hold up their hands for Justice against him. Those about the King have his ear, and represent things to him. If those about him (*protectio trahit subjectionem*,) intercept his Grace from his Parliament, not two nor ten can protect the King at *Whitehall*. Let us, in what we do, beget a confidence in the King. But still these unhappy actions and advices are the King's own; when we should deliver him from them, they are put upon him, and what those about him advise, is ill advice. I hope what *Gower* said may be forgotten, and I second the Motion for an Address, &c.

Mr *William Harbord*.] As for the Pardon, I know not what that is, nor what means "pardoning for murder;" which the King cannot pardon, because it is a crime against a greater than himself, against God. Some things the King will not pardon. Suppose any man had sold forty or fifty ships of the King's to the *French* King, or burnt them, does any man think that the King would pardon it? Let us proceed with safety to the King and ourselves. The Lords have refused you Justice, and have not committed the Treasurer to custody, and you ought to insist upon it as your right. When the Earl of *Middlesex* was charged in Parliament for embezzling the King's stores, he was immediately sequestered from Parliament. This Parliament has impeached the Treasurer, and the Lords deny us Justice, which their ancestors ever did us. As the King comes towards you, so I would have you go to-

wards the King; and I believe the King will never allow those Letters to have been by his own order, but that the Treasurer has been well paid for it by somebody. I can never believe that the King is so ill a man, that, when a War was depending, &c. he should order those Letters, to bargain for a Peace. I desire Justice against the Treasurer, in the name of all the Commons of *England*, but yet with all good manners to the King. I would have a Committee to draw up a representation to the King of the miserable estate of the Kingdom, and that this Gentleman is the occasion of it. If you suffer this Pardon to pass over so, you'll never discover the Plot. And if the advice of this Gentleman had been followed, some heads of the last Parliament that were troublesome to this Gentleman had been cut off. A Gentleman told me this morning of stifling of evidence, by the artifice of somebody or other, (pray God it be not a Member!) that a principal Witness is left out—Because a Pardon stifles all evidence. Put both Questions, the one for the representation, &c. and the other for the right of the Commons, in having the Treasurer sequestered from Parliament.

Mr *Sterne* *.] We have spent much time in talking of the Treasurer's Pardon. Every one knows the King's power of pardoning; cases of appeal only excepted; but if you will have a Bill to restrain the powers in them, that may prevent it for the future. All Laws that are made, are to restrain that unlimited power in the King, for, without those Laws, all power is in the King. (*He was out, and could proceed no farther, and Mr Seymour pulled him down.*)

Sir *Robert Southwell*.] One word has dropped from Mr *Harbord*, "that there is an abominable Evidence concealed, in the murder of Sir *Edmundbury Godfrey*." I would have him named.

Sir *Thomas Lee*.] Pray let no interlocutory discourse divert us from the Question, of sending to the King, as was moved.

* The Archbishop of *York*'s son.

Sir *Francis Winnington*.] The Rights of the Crown are not only in the case of this Pardon, but of us and our Posterity when we have done. I never had any difference with this Lord, but as an enemy to the King and the Nation. Now, what is your duty to do in this case upon the King's signification of his intention of pardoning the Treasurer? which I suppose is, as it were, asking your advice in it. If the King will pardon the Treasurer, without all controversy he has acquainted you early with it, to be advised by you. I apprehend, that is the reason why we entertain the Debate. If the King proposes it as a legislative case, then it is but to give the King advice what is fit and convenient to be done and advised. But if you consider it as you are prosecutors, then you are to consider the legal part; and I will consider both. He that stands charged, and pretends to a Pardon, confesses the crimes he stands charged with; he takes sanctuary, and pleads his Pardon under the Great Seal of *England*. The Law of *England* says, "that, by taking a Pardon, he confesses the crimes he stands charged with." This being considered, what is fit in this case for us to do? A Pardon once granted is not the Law of *Medes* and *Persians*, not to be revoked. They have been damned in *Westminster-Hall*, much more may they be here. And now what is fit for us to do? What is this Lord guilty of? Either his Pardon is commensurate to his crimes, or it will do him no good. A less crime than of assuming Royal Power was in the *Spencers* case in *Edw. II's* time. The Treasurer has exhausted the Treasure of the Crown, by acquiring a great estate to himself, &c. and endeavoured to stifle the discovery of the Plot, when it was just coming to light. Now the King communicates his Pardon to you, for these and several other offences, &c. for your advice. In this matter I will speak plain, and discharge my conscience. The Law of *England* is of an admirable composition. When great men are in the Presence of the King, I must believe, that persons, in their several stations, are good or bad, according to the effects of their Ministry. Should a Minister of
State

State have endeavoured to subvert the Government, Parliaments have power, by 25 *Edw. III.* to declare that Treason, and it is the wisdom of the Government to leave that declaratory power to Parliament, that no man, though ever so great, may be able to struggle with a Parliament. This Lord's crimes are so well known, that a man cannot pretend to be unprovided to speak to them—When came this great Lord in? When Popery came, and the Protestant Religion was discouraged, and no fitter man to succeed Lord *Clifford*, than Sir *Thomas Osborne*, a private Gentleman in the Country! Have not *French* Councils and Popery prevailed, and the Triple League been broken? And had the Plot gone on, nothing could have saved our Religion but a hand from Heaven. No man has been preferred in Court, but a friend to the *French* Government. Money was given by the Parliament for a War with *France*, and this man, at the same time, treats for a base and dishonourable Peace. Though the Law was made severe, that the money should be employed for so many ships, yet they are not half built, though Mr *Pepys* said “they would be built in a year.” And there was 600,000*l.* gone, for they got the money and prorogued the Parliament—Money was given to disband the Army, and that money was spent to keep them up, and then we were prorogued: But we have been so bit before, that no appropriating Clause we thought would serve turn, if the money was lodged in the *Exchequer*; and so the Chamber of *London* was thought of, to place it there; and this, you were told, was against the King's Prerogative, and that gave offence; though in the *Palatinate* War, the same thing had been done before, and so the Parliament was sent home; and this Lord is the person that breaks all your Laws. A Message was sent from the King, the last summer, “That things abroad had all tendency to Peace, but because of several emergencies of State, the King was advised to ask of his Parliament such a revenue as might bear proportion with his neighbouring Princes, the better to carry on and support the Government, &c.” This project was then brought into the
House,

House, and then Gentlemen said, " That it was a subverting the Government, and the way to make Parliaments useles." And though many Gentlemen in the last Parliament were willing to give money to the King, yet they supposed the granting the King so great a revenue as he then demanded, would make their use in Parliament cease, and so become insignificant. And upon their giving no money, their mettle broke off, and they had no money. This Lord must be the person that has done these things. How could this revenue, that the King asked of us the last Parliament, be brought to adjust that sum, but by him that knew and adjusted the Treasury? Things coming to this head, say they, " How shall we relieve ourselves?" Out comes a Plot, too hard for the Statesmen to suppress; and this demand was as a refuge to the Statesmen. They fly then to a Pardon for refuge, when the Letters this man is impeached for are all under his own hand, to subvert the Crown as well as the people. He that sets up Popery suppresses the Royal Family—The Spiritual Pope, and the Temporal Power of *France*, suppress both soul and body. But in the close of the last Parliament the inequality was so strong, that the strength of the pensioners did signify nothing, and the King sent them home and dissolved them. And I thank God here are none of them that I see. *Empson* and *Dudley* were mentioned; and was ever any man punished for not going against Law? It was answered, " That they stretched the Law farther than was intended." But shall he be pardoned that has gone against Law, and breaks the Law? No man is so mean as to have malice in his heart against the Treasurer, but the rights of the King are concerned in his crimes, and a good mettled man sets up again, and does the like exorbitances, and gets a Pardon from the King, and this shall be a reward for his crimes, and so escape unpunished. Since this Pardon of the Treasurer's was passed, he has got 5000*l.* a year for a Pension, and 1200*l.* a year of the Fee Farm Rents, which is part of the Queen's Jointure; and has taken it out of another branch of the revenue, because the Queen will not be so kind to him as to die.

die. It has been said, "that the King lets the unfortunate fall gently;" but never that he rewarded a man that has been such an enemy to his King and Country. What then shall I propose to you in this case? I would make an Address to the King, to take consideration of this Pardon, &c. —One word I heard of the King's Speech, "that we should not dispute this Pardon, though it had not passed the usual formalities, &c." I believe it has not passed all the Offices; as the Secretary's, the Attorney General's, the Solicitor General's, the Secretary's again for the Privy Seal, so that a *Caveat* may be entered, and so to the Great Seal. In all these gradations Pardons ought to pass, that the subject may enter *Caveats*. But if this Pardon has passed *per saltum*, I would move the King not to pass it, and represent to him the inconvenience of it. It is not without precedent that Pardons have been voided by *scire facias*, when obtained upon false suggestions, &c. The Treasurer could never have got this Pardon, but that he used arguments to the King, "that he was for his Prerogative, and his sufferings were for that; and so the Pardon needed not to pass the usual form, that the Commons might not put in a *Caveat*." I would therefore some way address the King, to represent to him, how unjust it is this Pardon should pass, and pray that it may be stopped. If the legality of it be now argued, it is a very improper time. For the legislative part, we impeach him as demandants. The King speaks to us in his legislative capacity; this is nothing to the Impeachment that is in the Lords House. It was sent up the last Parliament, and the same Commons of *England* prosecute the Impeachment still—But it is to my admiration that he is not committed to custody, being charged with Treason, (when formerly the Lords committed persons when for Misdemeanor only) especially now there are such tricks of running away. We say it is not a good Pardon, and may have a fatal slip in it, because done in the dark—Let him plead his Pardon *in hæc verba*, and we will plead to it. I infer from hence, whether it be lawful, or not? And though the King be surprized in the grant
of

of it, you may not be surprized. A man may have as much injustice in the manner, as the matter, of a grant. If the crimes of the Treasurer come to be judged capital, the forfeiture of his 1200*l.* a year—But those that come after us may say he is an example made of an offender, &c. You can but do these two things, either think him innocent, or make good your prosecution. It is a position in Law, “That the King’s Mercy is boundless;” but upon an Appeal, if one kills my father, the King cannot pardon it: I am his heir; I may have vengeance. The King can pardon only what relates to himself, no more than he can pardon an action of Debt. I will come a little closer. There are *mala prohibita*, wherein one part of the forfeiture goes to the informer, the other to the King. Before the information is commenced, the King may pardon the whole, there being no informer, &c. I would therefore address the King, to know how this Pardon was obtained, and then demand Justice of the King, &c.

Serjeant *Maynard*.] The great danger the King’s Person, our Laws and Liberties, have been in, you all know. What advice to give concerning this great Lord, I am at a stand. A great deal has been said, and with good affection, but some things mistaken. The King cannot pardon murder, unless it is said, in the Pardon, that it is murder. A man is found guilty of murder, and he pleads his Pardon; that is usual; but you have not read this Pardon, nor seen it. It cannot be allowed, till it be seen. But that which stumbles me most, is, that, when such acts are put upon you, the whole Nation is put upon ruin, if we do not take notice of this, when the King’s life is at stake—This Lord being charged not only with concealing Treason committed, but a Plot whilst upon execution; I take that for more. I will never speak for favour, nor affection; but a Pardon does discharge him in point of Law, yet you may enquire into it, and it is in the power of Parliament to take off that Pardon; but I do not think that your Impeachment
takes

takes off the Pardon; but it is in your power, as a Parliament, to void these Pardons.

Lord *Cavendish*.] I am one of those for the King's power of pardoning, &c. as many of his predecessors have done. But applying this Pardon to the circumstances this Lord is in, it is cruelty to the Public to let this Pardon pass. I would therefore apply to the Lords, to remind them of our last Message.

Mr *Vaughan*.] I will say nothing to the legality or illegality of the Pardon. But whether, on such an occasion, this Pardon can be just. When a Pardon is destructive to the people, it cannot be. That cannot be a mercy to the people that is so. One thing cannot be pardoned; he is called to account for high offences; and that he should advise his own Pardon, (what use are you of?) an Impeachment depending. When men grow too big for the Laws, you can call them to account, else they will triumph over the King's Justice and yours too. Before ever the nature of his crimes is opened, here is a Pardon chopped betwixt you and Justice. It is a great and glorious Prerogative in the King to pardon offences, &c. but at this rate of pardoning, you may have all persons break loose, and all honest men in prison. If you prosecute not your Impeachment you mislead the King, and give countenance to those ill Counsels given the King. If he must have his Pardon, let it be loaden with all the notorious crimes. Naturally all is true out of the King's mouth, but this Speech he is advised to. If this man must have the benefit of such a Pardon, I hope you will take care that no man else may.

Resolved, Nemine contradicente, That a Message be immediately sent, to remind their Lordships of the last Message sent from this House, relating to the Earl of *Danby*; and to demand that *Thomas* Earl of *Danby* may be forthwith sequestered from Parliament, and committed to safe custody.

A present Conference was desired by the Lords, without declaring any subject-matter; which occasioned this Debate.

Mr *Powle*.] If the Lords may require Conferences, without declaring the subject-matter, it may be about
Money,

Money, and then you will never reach them with a Conference about Judicature. They appoint place of Conference, and we do not. I am apt to think this an omission of memory in the Messengers; but if not, you must send an Answer by Messengers of your own.

Sir Thomas Meres.] The last Parliament, there was a present Conference desired by the Lords "on matters of great importance," and we granted it. When great things, as the Plot, &c. were on foot, that was some matter of Conference, but this is nothing at all. This is too big for me to advise upon. I will leave it to others.

Mr Vaughan.] Suppose that the Lords shall tell you "that it is necessary to give Money to build ships." This Message cannot have a particular Answer now, but I would send an Answer by Messengers of our own.

Mr Sacheverell.] Take care how you accept this Message. This looks as if it were upon some matters not to be conferred upon. 1 K. *James*, after the House had resolved a point of their own Privileges, they answered the Lords, "that they could not confer upon that point, having resolved it already." Therefore now I would send the Lords Answer, "that you will send them an Answer by Messengers of your own." And then send them word "that this Message is unusual, and that we cannot grant them a Conference, before they declare the subject-matter."

Mr Seymour.] I am very desirous to keep a good correspondence with the Lords, and our endeavours are all little enough to preserve the nation from the dangers we lie under. This is indeed an unusual Message. Formerly we have excepted against a general Conference, and now, in this here is no matter at all—This may disturb a good correspondence. I would therefore send a Message to the Lords, to let them know "that it is unusual to confer upon what we know not the subject-matter of before."

Resolved, That a Message be sent to the Lords, to acquaint them that it is not agreeable to the usage and proceedings of Parliament, for either House to send for a Conference, without expressing the subject-matter of that Conference.

Mr

Mr *Hills*, the Printer, at the Bar.

The Speaker.] Complaint hath been made to the House* of two scandalous Pamphlets that you have printed. The one is entitled, "A Letter from a *Jesuit* at *Paris* to his Correspondent in *London*, shewing the most effectual way to ruin the Government and the Protestant Religion." The other is entitled, "Two Letters from Mr *Montagu* to the Lord Treasurer, &c. which were read in the House of Commons; together with the Lord Treasurer's Speech in the House of Peers, upon an Impeachment of High Treason brought against him, &c." These two Pamphlets the House looks upon as seditious, and to reflect upon the King and the Government. They were printed for *Jonathan Edwin*; but as *Edwin* says, "that you, *Hills*, printed them, and delivered them to him," what authority had you to print these libels?

Hills.] I had direction to print them from my Lord Treasurer, who told me, "he would secure me for doing it; by reason that false copies might go abroad, he would have his Speech printed from his own copy, that he might be vindicated. The other he would have printed, to disappoint the Papists, who have ill will to the Government, thereby to do service to the Nation." There is no name to it. I received them from my Lord Treasurer both at the same time. The Treasurer gave them out to be printed about a week before the Parliament sat. *He withdrew.*

Sir *Thomas Clarges*.] This is a Breach of Privilege, to print Letters read in the House of Commons. I move, "that the Printer and the Publisher may be committed to the Serjeant."

Sir *Nicholas Carew*.] I differ from *Clarges*. The Printer gives you a free account of the matter, and you ought to encourage him. You see, by this, the great power and authority the Treasurer had.

Sir *William Pulteney*.] Both the Printer and Publisher have offended against Law, and they have not excused themselves by putting it upon the Lord Treasurer. They have not a legal authority for what they have done. No man is to do unlawful things by the command of a great

* This Complaint was made the day before.

man; for in unlawful things no man is to be obeyed. Whether this be a Breach of Privilege of the House, I know not; but I am sure it is a Breach of the Law. And if the contrivers of this Book were known, they ought to be punished.

Sir Robert Carr.] I would not put any discouragement upon evidence here, but let the Law punish them. Do not make it more difficult for evidence to come hither. I desire they may have some reproof; but because they have ingenuously confessed the matter, I would not deter them with other punishment.

Hills was called in.

The Speaker.] You know well, that the printing that Book is against Law. But, it seems, you take my Lord Treasurer for collateral security. But because you have made an ingenuous confession of the matter, the House does discharge you.

It was moved, "that the Books should be burnt by the hands of the Hangman;" but it was alleged, "that that power was in the Lords, and not in the Commons."

Sir Thomas Clarges.] I would not let this go for doctrine, that you have no Judicial Power. You have formerly condemned persons to ride with their faces to the horse's tail. In one of these Pamphlets, there are Members named, and both of them intrench upon your Privileges; and in that case you have power to punish. Another takes notice of Proceedings in Parliament. Give your opinion of these Papers, and then do what you will.

Mr Secretary Coventry.] The matter concerning the person of a Peer, you must properly complain to the Lords.

Mr Powle.] In one Paper there is what was spoken in the upper House, and you cannot well judge that; but "the Jesuit's Letter" is perfectly under your cognizance. A passage in it relates to four letters; whom he means by them, I know not; one of them may be interpreted for myself, my name beginning with a *P*. For my part, I take it to be no scandal to be thought no friend to the Treasurer.

Colonel *Titus*.] If I am intended to be the man that begins with *T*, the Treasurer has expressed his opinion of me in this Letter; and I'll be judged by the House, if I have not done as much by him. The scandal of the Pamphlets is to the King's Person and Government, and the Privileges of the House; and I say, I had rather be guilty of all those crimes than of divulging these Letters. The scandal is to the King and Government. He extolls the *French* Government, and speaks with contempt of ours. If there be any reason to hate the Government, and to have the King's Person in contempt, it is because the Lord Treasurer is Prime Minister.

It was referred to a Committee.

Sir *Robert Howard*.] In the time of the late War, I could find out, in dungeons and prisons, those who were for the King, and all that they suffered to be good subjects. But I begin to find now, that to reach a Minister is going through the King's sides, and wounds him. Here is the Nation represented, and that which supports the King, is his three States—Now I can speak; formerly I wanted courage and honesty to do it. This maxim has raised some people to that height they are at; to do ill, and put it upon the King. The worst action in the world is selling a Parliament of *England*, to be laid to the charge of the King. I hope never to hear that charge upon him more. If this be suffered, where shall right ever be found, but by the audacious method of selling the King? He is in the wrong!—But whoever hereafter shall dare to produce the King for author of ill Government, I would have it capital, and let it lie upon him to answer it. The condition of the King, at this time, is deplorably low, from 1674, 75, and 76, and I want not proofs to show it—If, in 1674, I said, “that this will destroy the King,” it was well prophesied. If we well know the Revenue, it is in the most deplorable condition that can be. The Government must be preserved by truth. Money, given for nothing, will effect nothing, and will be resolved to nothing. As to the Treasury-part, Lord *Clifford* was a great man, and he left it flourishing, and in good order, and I know the
King

King might have been supported in his necessities. I was Secretary to the Treasury, and look upon that charge as upon myself. The Revenue was then clear, and had no charge, and it was the felicity of Sir *Thomas Osborne* to come in so. And having said this, now is the time to come close to the King; and I move that the Address which you intend may say that to the King, which may restore us perfectly to the King. Now is your opportunity to let the King see matter of fact, how his condition is reduced, to shutting all things from his ears; and that no man that touches a Minister, but touches him—Draw up your own condition to him, and represent to him the Councils that have inclosed him, and that you are ready to be received by him, as you will receive him, that the King and you may be joined and knit, never to be dissolved.

Mr *Sacheverell*.] I agree with *Howard* in one point. I have lived to see other Ministers and actions than this Lord Treasurer—Else Gentlemen might take it for granted, that the only evils we groan under are from this man. I am not of opinion that to remove Ministers from the King will better our condition, unless those maxims of State they govern by be removed. Whoever comes in to be a Minister, follows the same maxims of State. This matter will be too long for this day. I would debate it on *Monday*. I will only open it, in general, to them that were not here before to see matter of fact. I take it for granted that the maxims of State we have been ruled by, have not been what the Kingdom has formerly been governed by. The love of the people is the security of the King; and the Law of *England* is the security of the King; it does not injure him. All our misfortune arises from the late times. When the King came home, his Ministers knew nothing of the Laws of *England*, but foreign Government, things managed by a premier Minister of State. One maxim they brought over, viz. “Make much of your enemies; your friends cannot hurt you.” Another was, “Make the people poor, and you will make them obedient.” Which makes the

people fear, that they looked upon greater security than the hearts of the people. Another maxim was, "To make the Parliament give money longer than the people can bear it." Another was, "That when money was given by the Parliament to particular uses, the Crown might dispose of it as it pleased, and the people must give money again." I will go back to 1667. Money was given for a Navy, and there was none, and whilst the Navy was exposed, I was an eye-witness of that miserable spectacle at *Chatham*. Next there was an Act, &c. to call men to account for great sums of money in arrear, &c. and the Commissioners were not suffered to proceed any farther in it, and persons concerned gave no farther account. Then the Triple League was broken, and Lord-Keeper *Bridgeman*, though he was a man of great integrity, yet was forced in a Speech to say what he did. We gave money to support it, and then it was laid aside. In 1670, as flourishing a condition as the Treasurer was in, the credit of the Nation was stopped, and, I doubt, no man knows when the *Exchequer* will get up its credit again. Then, a War was made with *Holland*, and all the money the Parliament gave to pay the King's debts was applied to that War, and more money was given, and they might have paid the debts of the *Exchequer*. Was not this an excellent administration of the Treasurer? And all this was done before the Lord Treasurer came into the Office, so that, unless you alter these maxims of State, by which we were governed, it is no matter who is Lord Treasurer. I would consider these things, in order to represent them to the King, &c.

A Message from the Lords: "The Lords desire a present Conference, &c. upon matters relating to the Earl of *Danby*."

Mr *Powle* reports, That the Duke of *Monmouth* opened the Conference thus: "I am commanded by the Lords to acquaint you, that their Lordships, having taken into consideration matters relating to the Earl of *Danby*, together with what his Majesty was pleased to say upon that subject, have ordered that a Bill be brought in, by which *Thomas* Earl of *Danby* may be made for ever incapable of coming into his Majesty's presence, and of all Offices and Employments, and of receiving any Grants or Gifts from the Crown, and of sitting in the House of Peers."

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The Earl of *Essex* added, " That the Bill relates to the beginning of the Parliament."

Lord *Fauconberg* *.] The Lords made haste to the Conference ; and to take away all difference between the two Houses, have sent the special matter of the Conference.

Earl of *Shaftsbury*.] The Lords are well contented, if you have a mind to it, to send the special matter of the Conference ; but it was the ancient way and usage of Parliament to send without it, &c. but out of compliance to the Commons the Lords have now sent special matter.

[Debate on the Conference.]

Mr *Powle*.] I think, this Conference is of the greatest consequence imaginable, and will cause great Debate. I desire that we may have time to think of it. Now it is too late to proceed, and let it be adjourned to *Monday*.

Mr *Vaughan*.] Time is protracted by adjourning the Debate, but not lost. Your steps will be the warier by consideration, and I second *Powle*.

[It was ordered accordingly.]

Mr *Powle*.] I would know how this Pardon of the Treasurer stands. If it has passed without the due formality, the Lord Chancellor deserves to be impeached for it, next to the Treasurer himself. I think it is the next crime. I would have enquiry made of the Lord Chancellor, how this Pardon was obtained, and into all other Offices ; it is of so dangerous a consequence.

Sir *Thomas Lee*.] I second the Motion, that two or three Members may attend the Chancellor, to know whether the Pardon passed his Office, and so the rest of the Offices.

Sir *Francis Winnington*.] A great Lord in Office (Lord *Anglesea*) said, " he knew nothing of this Pardon, till he heard of it in the Lords House." This Pardon is of more consequence than twenty Treasurers.

Mr Solicitor *Finch*.] As to the method of passing this Pardon by the Chancellor, Nature bids me speak. Since I heard of the passing this Pardon, I have enquired into it ; and the more I have enquired, it is the more for the service of the Lord that keeps the Seal. If the person be

* Son in Law to *Oliver Cromwell*, and Great Uncle to the present Earl. He died in 1700.

innocent, it was ill for him to get his Pardon. I cannot say who advised this Pardon, or who was for it, but who was against it I do know. When the Lord Chancellor dissuaded this Pardon to be given, and when he denied the Seal, and wrote a Letter to have it pass in the usual forms, a command was sent from the King, that he should come to *Whitehall*, and he brought the Seal to the King, and the King commanded the Officer, in his presence, to seal it. The Parchment had *C. R.* on the top. This is the true state of the affair; and if you enquire into it, you will find it so. Pardon me, if my relation to this Lord constrains me so early to give you an account of this.

Ordered, That a Committee be appointed to repair to the Lord Chancellor, and the other Offices, and enquire into the manner of suing forth the Pardon of *Thomas Earl of Danby*; and make their Report, &c. [on *Monday*.]

Monday, March 24.

Sir *Henry Capel* reports, That he has searched the Lords Journal of the last Session of the last Parliament, in reference to the Judges Opinions about Commitments. This is entered the 7th of *December*, 1678. "The Lords entering into the consideration of the Impeachment, two questions did arise: 1. Whether the Judges always commit, or take bail, upon an accusation of Treason? And, 2. Whether a person, being indicted for Treason, the Judges are obliged to commit him?" The Judges, before they gave answer, desired to consult with their brethren. After they had consulted, they gave this answer: "At the *King's Bench* they always do commit, or take bail, as they think fit, and that the Court of *King's Bench* may bail him." Then it was proposed, Whether they bail for Misprision of Treason? They answered, "They do it as they please, in discretion." The question being put, in the Lords House, Whether the Earl of *Danby* shall be committed, &c. it was resolved in the negative, and there was an entry of the Protestation of some Lords, &c. but that being no part of your Order, we took it not out. "Whereas the Earl of *Danby* is impeached by the Commons, &c. and the Commons have exhibited several Articles, &c. specified, *Ordered*, That the Earl of *Danby* have a copy of the said Impeachment, &c. and Counsel to assist him in point of Law, for his defence." Another entry made of the Opinion of the

the Lords, in reference to the State of the Impeachments the last Parliament : “ *March 19, 1678-9, the House taking into consideration Petitions of Appeal, &c. Resolved, That, in all Impeachments, and all incidents relating thereunto, &c. all Appeals, Writs of Error, &c. dissolution of Parliament does not alter the state of them.*”

Colonel *Titus*.] If this Impeachment be a slight business, and the Lords will not commit the party, and the Lords will take no notice of your Message, the Treasurer sits there to judge himself. Let this go, and you can never answer it to the world, if you slight it to that degree as to adjourn the consideration of the Lords not committing him, *sine die*. I move, therefore, that you will adjourn the consideration of this Report to *Thursday*, ten of the clock.

Sir *Francis Winnington* reports.] We repaired to the Chancellor, according to your command, to enquire into the manner of passing the Lord Treasurer's Pardon. The Committee went to the several Offices, where Pardons always must pass. At Mr Secretary *Coventry's* Office there was no entry, and Mr Secretary said, “He knew nothing of the entering any such Pardon in his Office.” Then the Committee went to Lord *Sunderland's* Office, (the other Secretary.) Mr *Bridgman*, his Secretary, assured us, “There was no entry of the Pardon there.” We then sent the Chairman of the Committee to Lord *Sunderland*, &c. He sent us word, “He knew nothing of the Pardon till the King acquainted the Parliament with it.” We found no entry, &c. at the Signet-Office. From thence we went to the Lord Privy Seal's Office, where was no entry, &c. and the Lord Privy Seal farther said, “That if such a Pardon had come to his Office, he would very well have considered it before he would have passed it.” Then we went to the Lord Chancellor, &c. who said, “As to the Pardon, &c. he neither advised it, drew it, nor altered one word of it—And as to the manner, &c. the Treasurer delivered it to him, and asked him, “Whether *omnia et omnimoda indictamenta, &c. impetitus vel non impetitus*, did extend to the Impeachment?” The date the 1st of *March*, &c. The Treasurer desired “That it might pass with all the privacy in the world, because he intended not to make use of it, except false witnesses should be produced against him at his tryal, and then he would make use of it at an extremity.” He thereupon wrote the Treasurer a Letter, “That it was for the service of the King, that the Pardon should be considered, and if he would take his advice, he should

Let the Pardon pass in the regular course, to prevent, resuming the Impeachment against him." Then the next day he met him, he declared to him the same advice. The Treasurer told him, "That the King was resolved to have it done in all privacy." The next day, the King commanded the Seal to be brought to him, and commanded him to take it out of the bag. Then the King wrote his name on the top of the parchment, and the person that usually carries the Purse set the Seal to it; and at that very time this was done he looked not upon himself to have the custody of the Seal." And the Chancellor farther said, "He took upon himself to make no Memorial of the Pardon in his Office, and that it was a stamped Pardon by creation."

Mr *Sacheverell*.] By the Report that is made to you, it is visible, that this Pardon, and the manner of gaining it, is as dark as the crimes it has pardoned, against the Stat. of *Rich. II.* which directs the method of passing the Seal, &c. That this Pardon is nought, I doubt not, and not according to that Statute, nor do I doubt that, when his cunning has deceived you, you may have your end. The subject has a right of entering a *Caveat* against any Patent. In the name of the House, if you, by Order, &c. resolve that no such Patent be entered, I doubt not but it will be so effectual, as that never an Officer in *England* would dare to touch it.

Mr *Garroway*.] The Treasurer has mistaken himself in this, &c. and I am glad he has so. Now let him have no advantage upon you, since he has missed the right way. Go on with your business of the *Caveat*, that neither this, nor any other Pardon, pass in this clandestine way.

Sir *Francis Winnington*.] I propose, that a form of a *Caveat*, &c. may be drawn, to be entered at the several Offices. I believe that no learned man can pretend, that a Pardon can pass in bar of an Impeachment. It is a duty we owe to our King and Country to be very cautious how to proceed in this matter; and that it may be put into such method as may have effect, I would not confine ourselves to a *Caveat*; that looks too little for the Commons of *England*. Consider these two things; first, what to do in this; and then, how to prevent it for the future; and

and I hope you will resolve on apt methods to prevent such mischiefs for the future.

Mr Secretary *Coventry*.] What is moved is full of reason. But as to the matter of prevention of passing Pardons in all future cases; if the Commons urge, that no Pardon shall pass till they be heard, no particular man goes to a general—That no man shall get a Pardon, till I am heard—That no Pardon shall pass for robbing or killing such a man, till I am heard generally—That never was; but that a Pardon pass no farther than a *Caveat* can prevent.

Mr *Sacheverell*.] The Motion that I made was not general, but only to this particular and individual person, the Treasurer.

Serjeant *Ellis*.] This Report is of great concern to do something upon it. Consider whether the Chancellor, by the duty and trust of his place, ought not to have acquainted the King with the exorbitancy of this Pardon; neither fit for the King to grant, nor the Treasurer to receive, in a clancular and clandestine manner. I think that you may declare “that the Chancellor has not done the duty of his place to pass this Patent;” an illegal Patent both in matter and manner! I offer it to your consideration whether the Pardon is not absolutely void? The King is the fountain of Justice and Mercy; he may pardon offenders, but some things the King cannot pardon, though the Indictment be in the King’s name; as that of the repair of a high-way, or a bridge, or any nuisance, because all the people are concerned in it, and it is *pro bono publico*, &c. and is not this matter of the Treasurer, &c. as public as a high-way, or a nuisance, or any other thing? This Impeachment is at the suit of all the Commons of *England*; neither the King nor the Attorney General are parties to it. It is in the nature of an Appeal of Rape, which the King cannot pardon. And now that all the Commons of *England* are in the nature of Appellants, I offer it to your consideration, and would have the Gentlemen of the Long Robe consider, whether this be a good Pardon, or valid in Law, or not. I advise that, notwithstanding

standing this Impeachment of the House of Commons, this Pardon has walked in the dark—Let the Treasurer put his case to it, whether it be a good Pardon in Law, and put it whether he ought not to be imprisoned. I move therefore that you will go on to the Lords upon the Impeachment, and desire that the Treasurer may be imprisoned. This is the reason of all our misfortunes, that the Lords do not imprison him, and do us Justice at the first.

Mr Powle.] The entering a *Caveat* by this House in the several Offices, &c. against this Pardon of the Treasurers is a diminution of the authority of the House; our obligation must be to the King—Not the Officers to go to every petty Office to enter *Caveats*. The very procuring this Pardon is criminal, and it will make those that have been faulty in it criminal. As for the Pardon, I take it to be a void Pardon—By 13 *Richard II.* “all Pardons for Treason, Murder, Rapes of women, &c.” 18 *Hen. VI.* “there must be a Warrant from the Chancery; and a recipe for the date of all Pardons;” otherwise obtained, they are void within that Stat. Pardons must go by regular steps, and all things are to pass through those hands that may be accountable for them; otherwise, both the King and the subject may be abused. Lord *Coke*, in his *Institutes*, says, “that if the Lord Chancellor put the King’s Seal to a Grant, without a Warrant to a Grant, it is Treason.” If any thing passes the Seal without a Warrant, it is void. It is true, that Writs, and things of ordinary course, as Pardons for killing a person *se defendendo*, or by Chance-medley, may pass without Warrant; but where there is not a Warrant for the Great Seal, as the Statute appoints, it is absolutely void. The Order of the day is “to consider of the Conference with the Lords on *Saturday*,” where they acquainted you with their intention about a Bill for banishment of the Treasurer, &c. I suppose that the meaning of the Lords is, that you should lay aside the Impeachment and embrace that Bill; but that way is very improper; for I never heard of a Conference upon an Order for a Bill to be drawn up, from either of the Houses.

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The same power that brings in this Bill on *Saturday* may throw it out on *Monday*, and can this convince any reasonable man that we do Lord *Danby* Justice? If *Danby* can be had to answer Justice, then there is no need of this Bill, nor Bill of Attainder. Lord *Cromwell* advised an Act of Attainder, and the person was never brought to tryal, and Lord *Cromwell* was attainted in the same manner. I hope, as that was the first Precedent, &c. so it will be the last. If men fly from Justice, let an Act of Attainder follow them; but I am for this Lord's tryal, and I would go on in the same steps as before. One process of Law is as much as judgment of Court. The Lords deny Justice to this House, and the whole Kingdom, &c. and I would send a Message to the Lords to demand Justice of them, and send it in writing, to desire that this Lord may be committed; and when the Lords will not do it, and refuse to take it into consideration, if great men may offend with impunity, I know not what will come of it. Therefore I move as before.

Sir *William Pulteney*.] It may be this Pardon is conditional, and will depend upon Averment; but admitting that the form be good, and the *Non obstante*, I cannot speak to it till I see it; but whether the King can pardon any great Minister impeached by the House of Commons, or not, is the Question?

Sir *Thomas Lee*.] I would have you demand a Conference, upon the subject-matter of the last Conference, and so take an opportunity of reasoning with the Lords on your right, &c. and how this Bill is not suitable to Justice, and that it will look like an encouragement, &c. of their assuming to commit, or not commit, a person impeached of Treason, arbitrarily, and the offender may be protected for want of Justice, that he may retire into the country. What is before you to-day is not the Pardon, &c. whether it be good or not good, but that the Lords should let slip the opportunity of committing him, and that he should be so near the King, as to put you to all this trouble. You may show the Lords, that they are the Great Court of Justice, and how
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can they punish inferior Courts for delay of Justice, when they shew them the example?

Sir *Thomas Meres*.] I would have a Conference with the Lords, rather than a Message; it loses time; as papers and letters do, when persons may speak together. I would ask a Conference upon the subject-matter of the last Conference.

Mr *Vaughan*.] By what appears to us, this Pardon, thus let go by the Lord Chancellor, is as ill as what Lord *Danby* has done. What we go to confer about, is not ours or the Lords right, as to the Pardon, but the right of the Kingdom. All the traytors in *England* may get away at this rate. I would therefore send to the Lords, to demand Justice against the Earl of *Danby*.

Resolved, Nemine contradicente, That a Message be sent to the Lords, to demand Justice, in the name of the Commons of *England*, against *Thomas* Earl of *Danby*; and that he may be immediately sequestered from Parliament, and committed to safe custody.

On a Motion for an Address to the King, to represent the irregularity of the Earl of *Danby*'s Pardon, &c.

Mr *Sacheverell*.] I remember, of late, but one singular instance that you have had benefit by Addresses. That against the Duke of *Lauderdale*, and for preventing the growing greatness of *France*, you had excellent success in. That's a single instance against all, &c.

Colonel *Birch*.] I remember not that success in other things, as in the Declaration, but I know not why we should not lay before the King the prejudice this will create, if the King renews the Pardon of Lord *Danby*. It is impossible this Nation should be defended, if there be this precedent of Money squandered away, as has been in these six years last past. There are twelve or thirteen petty farms upon the Customs, though given for the defence of the Seas by Act, &c. I would let the King know this. A thing may be well done by three or four Officers, and ill done with fourteen by putting in a friend. Money has been forgiven and remitted, for what consideration I know not. What has been well done with 400,000*l.* has been

ill

ill done with 700,000*l.* In the garrisons of thirty guns, not ten mounted; and this, by putting in friends to be Officers. As for the Plot, "Damn me, why should they meddle with the Plot?" And "There goes *Oates*, (says *Danby*) the Saviour of *England*; I hope to see him hanged within a month;" and persuades others to go away where they say he is gone—Rather be under one tyrant than a hundred—I mean *France*. As for this Pardon, had I a hundred lives to breathe, I would not breathe one of them if these things be endured. I would therefore represent to the King, in all humility, that he would be pleased to lay aside this Pardon.

Mr *Garroway*.] I would address the King with submission and gentleness; but before they should touch one penny of our Money, I would have satisfaction about this Pardon. But when they come with strained stories of necessity for Money, next to Perjury, the Plot was upon our purses, and then we were sent home, and did nothing for the Nation; and for these eighteen years we have done nothing. But I hope these Gentlemen will be wiser. If you will address the King, I am not against it, &c. and send to command the inferior Officers, &c. for the rest.

Sir *John Ernly*.] What calls me up is not for Money; I had no thoughts of it; but for the embezzlement of the Treasury for these seven years, as is alleged. I have a paper in my hand, of what has been done in the *Exchequer*. Of 900,000*l.* there has gone 700,000*l.* to the Navy, and the Bankers; since these six years, not particular to the King's purse one penny. But the additional Duty went only to the King's purse.

Mr *Vaughan*.] When a Motion for Money is unreasonable, it will be denied when it is reasonable. When Laws are broken, it is not by the Prince, but by his Ministers. Addresses have been denied; but (to what *Ernly* moved) as we have been unfortunate in our Addresses, so has the King been in having such Ministers, that have advised him to deny our Addresses. When Laws were abused, we addressed; and when we gave the King good reasons,

reasons, he yielded to us, and you have as good reasons now as ever. You had success then, and I hope you will have so now.

Sir *Francis Winnington*.] When we appeal to the King in his Royal power, then it is reasonable he should do us right; but an Address is a kind of compliment and wish, and the King may deny us. All that is desired now is, to represent to the King the undue manner of Lord *Danby*'s obtaining this Pardon. The parchment was brought to the King. I would know who brought it, ready cut and dried! When great men are too hard for honest men—All have complained of the exorbitancy of this man; and we are like to do little service in Parliament, when all the Answer to an Impeachment from the Commons is a Pardon. My Motion is, "That you would make an Address to the King to stop any farther Pardon, and on *Thursday* take into consideration how to prevent such unexampled mischiefs for the future." Else I shall neither esteem my life, nor my estate, to be my own.

Lord *Cavendish*.] I would have a Committee appointed to draw up an Address to the King, as was done in the case of the Declaration, "That such Pardons may not pass, but by Act of Parliament."

Sir *Thomas Lee*.] There is a difference betwixt desiring the King, "that it may be done for the future," and saying, "that it is against Law, and it ought not to be done." As Sir *Thomas Clifford* said, "Give the King Money by Land-Tax this once, and you shall for the future petition the King that you might give Money by Land-Tax again." If you enter a *Caveat* against this Pardon in the Offices, &c. it is below the dignity of the House. If you address the King, &c. I would express that the Pardon is against Law.

Colonel *Titus*.] You were told the other day (by *Howard*) of the dismal state of the *Exchequer* by anticipations, and now by *Ernly* of the good estate of it, and what vast debts have been paid by this Treasurer, and a course taken for the payment of the Bankers; but in six Terms it

it will appear, there has been 231,000*l.* paid by the Treasurer for secret service. Both these accounts cannot be true. By another you are told, "that the Revenue is so anticipated, it is impossible to be redeemed." I am of opinion that you address the King, but am far from thinking it fit for the House to enter a *Caveat*, and as far from commanding the inferior Officers not to enter the Pardon, &c. But you may address for the inferior Officers to be punished for entering it. Put a brand upon this surreptitious way of obtaining Pardons, and provide against such things for the future. Back your Address with reasons, and appoint a Committee and prepare your reasons to obviate such an inconvenience for the future.

Resolved, That an humble Address be made to his Majesty, representing to his Majesty the irregularity and illegality of the Pardon lately granted to the Earl of *Danby*; and the dangerous consequence of granting Pardons to any persons that lie under an Impeachment of the Commons of *England*.

Mr *Goring*.] I understand that this is the day appointed for Mr *Oates* and Mr *Bedlow* to give evidence against some Members, &c. and I understand that Mr *Oates* has complained of me. I thought it a great misfortune; but if I gave Mr *Oates* ill language, he was even with me. I had a bad journey yesterday, and I expect my ague to-day, and I desire Mr *Oates* may be heard now.

It was adjourned to the next day.

Tuesday, March 25, 1679.

Mr *Oates*, at the Bar, reads his accusation against Mr *Edward Sackville*, viz. After the House of Commons had declared the Plot, and that I had given my evidence against Mr *Coleman*, and he was found guilty and executed, &c. Mr *Sackville* declared frequently in discourses, "That it was no Plot, and that he would lay 100*l.* that *Oates* was proved a rogue and a rascal."

The Speaker gave Mr *Oates* a reprimand for what he said the other day, viz. "The King holds his Crown by the same title I hold my liberty, &c."

Mr *Oates* answered,] I am sorry I gave offence to the House, in what I said, but it was my conscience, and it was truth; and though I may not say it here, I will say it elsewhere, and believe it too. *He was ordered to withdraw.*

Mr

Mr Secretary *Coventry*.] Pray consider what this House will come to, if persons be permitted to speak here at this rate.

The Speaker resumed the Chair.

Sir *Robert Howard*.] Mr *Oates* went very high in his expressions the other day, and you gave him a gentle reprimand, but now he has asserted the judgment of the House of Commons and his judgment to be different. He says, "that he would say the words elsewhere." Let him know that the House will not suffer it. It is a high thing, and I would have him told of it sharply by the Speaker.

Sir *Robert Peyton*.] It will be very hurtful to give any discouragement to the King's Evidence. It has already gone all over the city.

Sir *John Ernly*.] He tells you, notwithstanding your tenderness in reprimanding him, "that he will say the words elsewhere." Send for him, and give him a reprimand.

Mr *Garroway*.] I would not enter into a Debate of this nature. Mr *Oates* is a passionate man, and none of the best mannered men, but no man can regularly censure Mr *Oates*, but he must debate the merits of the thing he has said. Send for him in, and only admonish him to use better language for the future, but I would by no means enter into the arguments of the merits of the thing.

Mr Secretary *Coventry*.] This language is like a woman indicted for being a whore, and she says, "she is as honest as any woman in the highest place." This is very indecent.

Sir *Robert Howard*.] I know not but your safety depends upon what Mr *Oates* has to say of the Plot, and I would not discourage him.

Sir *Thomas Lee*.] I am concerned to speak at this time. Could I sit still, I would. Though the words which fell from Mr *Oates* are very considerable, and though they were true, yet all truth is not to be said at all times. You can do no less than reprimand him for what he has said;

said; yet, though he be great evidence, he is not to be privileged to say what he pleases. The Long Parliament, in the height of their discontents, &c. were very tender of any reflections upon the King; though Debates went high in the House. You can do no less than reprimand him.

Colonel *Titus*.] I am in some difficulty what to say. I commend Mr *Oates*'s zeal, but I like not his heat. He has used the House of Commons little better than the King. I am not to be angry with a man for pulling me out of a ditch, though he tears my cloaths. Let him be called down, give him a reprimand, and let him proceed to manage his evidence.

Sir *Thomas Clarges*.] Consider of it farther, before you call him down. Should he not answer your expectation, what would you do with him? The fault was only the unmannerliness of the expression. Consider of it. Should he say still "that it is his opinion," and you send him to the *Tower*, and that opinion be upon your Books, a day or two hence he may be cooler, and pray defer it.

Mr *Seymour*.] This is a new way of proceeding: Persons who have been reprimanded at your Bar, ought to go away satisfied with your pleasure. Though Mr *Oates* has done, and may do, great service to the Public, yet he has no privilege to be saucy to his Prince; and uncivil to you. When you told him of a thing not fit to be done, he tells you, "he will do it." You can do no less than reprimand him.

Mr Secretary *Coventry*.] I am glad you are out of this business; for fear you should fall into a worse business. I would have you tell Mr *Oates*, "That the House expects not expostulations nor answers from him; but obedience to the House, and no more."

Mr *Oates* at the Bar:

The Speaker.] I am commanded by the House to tell you, that the House is not satisfied with the reply you made when you was reprimanded for what you said the other day, and it does not become you at all. You come not here to expostulate, but to obey the Orders of the House.

Then Mr *Oates* produced the following evidences against Mr *Sackville*.

Mr *Ray*.] Mr *Sackville* said, "That Mr *Oates*, the main evidence against *Berry*, *Hill*, and *Green*, was perjured, and that the Parliament were a pack of knaves and fools to take cognizance of two such perjured rogues as *Oates* and *Bedlow*, and that, to his knowlege, the Plot would prove a fanatical sectary Plot to destroy Monarchy. That *Bedlow* was a perjured rogue, and a highway-man, and, he wondered that the House would take cognizance of him." This Mr *Sackville* said at the Coffee-house in *Bow-street*, *Covent Garden*.

Mr *Franklin*.] I was at the Coffee-house, about a fortnight after Mr *Coleman*'s tryal, where Mr *Sackville* said, "He thought that Mr *Oates* was mistaken in his evidence, and would lay a wager, that Mr *Oates* was proved perjured in a fortnight's time."

Mr *Molineux*.] I was at the Coffee-house with *Franklin*, and heard Mr *Sackville* say, "That it was no Plot, and it would be proved no Plot, for the evidence would be proved perjured in a month's time; and he would lay 100*l.* to some shillings, that there was no more truth in the Plot, than in the killing of Sir *Edmundbury Godfrey*; for it was the opinion of the best of the land, and the King believed that he had killed himself, and was not murdered." I was questioned by Mr *Oates*, why I did not complain of Mr *Sackville*; but men of better quality than myself heard what was said, and therefore I thought not fit to do it.

Mr *Tizard*.] I heard Mr *Sackville* in discourse several times say, "That there was no Plot, and that *Oates* and *Bedlow* were rogues, and not to be believed." But I do not remember particular words. At another time, in a great discourse, he was arguing against the Plot, and said, "Possibly we were in a dream, and that it was no Plot, and no murder, &c." and threatened to beat me for saying the contrary.

Mr *Speke*.] I was at the same Coffee-house, when I heard Mr *Sackville* say confidently, "That it was no Plot, and that *Oates* and *Bedlow* were rogues and rascals."

Mr *Irwin*, an old Taylor.] I heard Mr *Sackville* say, "That *Oates* and *Bedlow* were rascals, and that none but fools would believe them."

Another said, "he did remember little of Coffee-house talk; company came to him from the other table, and said, "they admired to hear so much vindicating of Popery."

Robert Smith.] I cannot say much of particulars, but observed Mr *Sackville* very zealous to persuade persons that there was no Plot, after the House of Commons had voted it a Plot, and persons

sons were executed upon their Evidence, and "that none but fools and knaves would believe it a Plot." *They withdrew.*

A Message from the Lords, by Baron *Thurland* and Baron *Littleton*, That their Lordships had taken into consideration the matter relating to the Earl of *Danby*, and had ordered the Usher of the Black Rod (before they had received the last Message from this House) to take him into custody, and bring him to the Bar of the House of Lords to-morrow morning, and that the Usher had returned their Lordships answer, that he could not be found*.

Mr *Sackville*.] I have heard my Lord Chief Justice *Scroggs* say, "That it was Mr *Coleman*'s Letters, and not the evidence, that condemned him." As to the whole matter that has been said against me, it is a hard thing to prove a negative; it is impossible. But I have behaved myself so all my life, as never to be against the King, nor the Government. I believe that there was a Plot, but not every thing of the Plot. I shall limit my discourse so for the future, as not so much as to name Mr *Oates*, nor any thing of his former life. *He withdrew.*

Serjeant *Maynard*.] Our throats were in danger of being cut, and the King's life of being taken away, and *Oates* gave information of it. *Coleman* was tryed; his Letters were produced, which justified *Oates*'s evidence; upon which he had his prosecution and death. The House of Commons voted this a Plot, &c. and the Lords also, and tryal went upon this, and clear evidence was the conviction of *Coleman*. What is now before you? We are called "fools, and knaves, and rogues, and mad men," for believing it. I hope the Gentleman will not continue among us, to be a companion of fools and knaves. Where did this Gentleman do this? At a coffee-house and taverns. It has been a great design, and general in the Nation, to disgrace the evidence and the

* Though the Gentleman Usher reported, that the bird was flown, yet the contrary was true; for though his servants denied him, both at his house in town and at *Wimbleton*, Sir *John Reresby* saw him come out of his closet at mid-

night, from a consultation with his intimates the 24th, which was the very day the Lords made the Order for his commitment; and when he did disappear, it was only to take sanctuary at *Whitehall*. *Ralph.*

Parliament, and then the Plot was a foolish thing. It is a great charge upon this Gentleman, and deserves the severest censure that can be. Put him into such a condition, that Mr *Oates* and Mr *Bedlow* may have remedy against him, and that is by expelling him the House.

It was moved, that the Evidence against Mr *Sackville* might be read.

Mr *Hampden*.] I remember not that ever the Clerks did read an Evidence given *viva voce* at the Bar, unless when a paper is given in (to be read) by the Evidence. The crime of this Gentleman is invalidating the King's Evidence. What has been delivered by the Witnesses is not so long, but it may be remembered. You need no more than to consider whether the Evidence be sufficient to prove the charge against the Gentleman.

Mr *Vaughan*.] Though the words were spoken of a Parliament that is gone, and dissolved, yet as to the Plot, their opinion is still your opinion. The words proved upon this Gentleman are as bad as can be; and if you believe them to be spoken, you need not any farther to have the Evidence repeated.

Sir *Francis Winnington*.] The particulars, as I apprehended, of the Evidence, were, that this Gentleman should say, "That *Oates* and *Bedlow* were perjured rogues," and "that the Parliament that voted it to be a Plot, were a pack of fools and knaves, that would meddle with the Plot, or believe it." *Smith*, and the first Evidence, proved, "That he said it was a fanatical Plot to destroy Monarchical Government." Pray put these things down in your Question.

Mr *Du Bois* bringing the words he had collected from the Evidence to the Clerk,

Sir *William Coventry* said,] No man takes notes exactly, and no man is to be believed more than another. When Witnesses give Evidence at a tryal, no man takes notes of it for the Jury, but they may take notes for themselves. When a Committee reports a matter, &c. then the Evidence is reported, because all of the House are not present at the Committee, and so all must be informed

informed of the Evidence, to give judgment upon it. But in this case you have nothing farther to do, but to give your opinion of the whole matter. If you believe the Evidence, then put it into a general charge.

Resolved, That it appears to this House, by Evidence heard this day at the Bar, that Mr *Edward Sackville*, a Member of this House, has, in several public discourses, dishonoured and aspersed the King; and that he has gone about to make it be believed that there is no Popish Plot, by vilifying and disparaging the evidence given for the discovery thereof, and contemning the Proceedings of Parliament thereupon; and endeavouring to stifle the belief of the murder of Sir *Edmundbury Godfrey* by the Papists.

Ordered, That Mr *Edward Sackville* be sent to the Tower, and that he be expelled the House.

On a Motion that the King be moved to turn him out of his employments, &c.

Mr *Secr. Coventry*.] He has committed great faults, and all extensive to his punishment. But when the King is particularly moved, I would not have you confine the King to punishment, but leave that to the King.

Sir *William Coventry*.] The King must take cognizance that this Gentleman is turned out of the House. Is it your intention to have that a secret? For these and other reasons, the King may examine the matter over again, to punish it his own way; therefore I would leave that part of your punishment to the King, to do in it as he pleases.

Mr *Boscawen*.] It is worthy your consideration, whether you will acquaint the King that you have turned out your Member; but then you may let the King know his crimes, and you will see whether such persons will be kept still about the King.

Mr *Mildmay*.] The danger of *England* is not so much by Papists, as by Protestants in masquerade—Some professed Protestants hold dangerous correspondences with Papists; and whether this Gentleman be not such a correspondent, as disparages the Protestants, and King, and Parliament? This now is a precedent—The spirit of *England* is as much in this Plot as ever; but I know not how that place was spirited that sent this Gentleman hither. I would therefore address the King, to let him

see the sense of the House, of the danger the Kingdom is in, of any man thus mixed and touched, to be in any employment; and humbly to desire his Majesty, that he may be dismissed from all his employments, and disabled from farther employment; that this may be no discouragement to Parliaments.

Resolved, That his Majesty be humbly addressed to remove Mr *Sackville* from all public Employments and Trusts.

Mr *Boscawen*.] When sentence is giving, the Serjeant ought to be within the Bar with the Mace, and the Gentleman without the Bar. I know not how you will favour this Gentleman, but, by course of Parliament, he ought to kneel while the Speaker gives the sentence.

Lord *Cavendish*.] I like any opinion of the House that looks like justice, and not animosity. Col. *Wanklyn* was turned out of the House, for selling protections, and he did not kneel*. I would have nothing look like partiality.

Sir *Thomas Lee*.] I am unwilling to speak in this case, but I would not have examples of the last Parliament, where we were pretty tender to one another. No man knew, in *Wanklyn's* case, whose turn it might be next. When judgment is given to a man's face, he always knelt, &c. In the last Parliament, some were sent to the *Tower* without hearing their sentence. But pray let this sentence be, according to the old course of Parliament, kneeling.

Sir *Harbottle Grimstone*.] All the Journals since Queen *Elizabeth's* time shew, that all persons sentenced at the Bar were upon their knees, and I know no reason this Gentleman should be dispensed withal.

No Question was put upon Mr *Sackville's* receiving his sentence upon his knees, it being agreed to be the constant Order of the House.

Mr Secretary *Coventry*.] I am not satisfied with it, but would have a Question for it.

Sir *Thomas Player*.] In putting this Question, pray do not make a doubt, whether you'll have less honour done you than your Predecessors have had. It is an acknow-

* See Vol. V. p. 57.

ledgment that he was a guilty person, and his sentence just, and pray let old customs be kept.

Sir Ralph Ashton.] I never knew that a criminal was not brought upon his knees to receive his sentence at the Bar, since the 21st of King *James*.

Mr Sackville was brought to the Bar, and kneeling,

The Speaker said,] The House has considered of the crimes you have been accused of, and the evidence, &c. They find them of a dangerous nature, and tending to the dishonour and scandalizing of the King, and justifying those who were in conspiracy against his life. You have contemned the Parliament, and slighted the Members; you have cut off mens procuring further discovery of the Plot; and, in what you say in your discourse, you follow the dead to his grave, (*Godfrey*,) who died for his service to the King and Kingdom. Therefore I am ordered to tell you, that you are to be committed to the *Tower*; and, because you have so little regard to the safety of the King and Kingdom, I am to discharge you from your attendance any longer in Parliament.

Mr Sackville.] I hear there is an Address intended to the King to remove me from my employment. I hope it is not the desire of the House to ruin me, for I have nothing else to eat bread with.

He was taken into the Serjeant's custody.

Mr Oates named several Members for evidence against *Mr Sackville*.

[*Ordered*, That a Bill be brought in to summon *Thomas Earl of Danby* to render himself to justice, by a day to be therein limited, or, in default thereof, to attain him.]

Wednesday, March 26.

Mr Oates at the Bar.] Since the last Parliament, *Mr Henry Goring*, in the Lobby of the Council-Chamber, whispered me in the ear, about bailing *Sir John Gage*. I answered him, "That I would never be concerned in bailing such a traitor and such a rascal as *Sir John Gage*." *Goring* replied, "It did not become him to say so," and swore, by God, "he did not believe he was a traitor." I answered, "I wondered he should say that to me, because I was the party that accused him;" and I leave the rest to *Mr Goring* to say. *Goring* was very lavish of his tongue

in the Country, "that he had the King's ear and favour," and I appeal to Sir *John Fagg* to give you an account of *Goring's* expressions in the Country. I confess I gave *Goring* harsh words in reply, and I knew him to be Mr *Henry Goring*, but not that he was a Parliament man.

The Speaker.] What were the words?

Mr *Oates*.] I carry not a calendar in my head. I can say only, in general, that *Goring* has so vilified my honour and reputation, as the King's Evidence, and given me such harsh words, that I thought fit to complain, &c. As to *Goring's* expressions in the Country, I am confident that Sir *John Fagg* will do me justice, *He withdrew.*

Mr *Goring*.] I desire that Sir *John Fagg*, and the other Gentlemen, may say what they know as to my carriage in the Country, and of my saying I had the King's ear. If I had, I might have got something by it.

Sir *John Fagg* being not well, and absent, the thing for the present fell.

Sir *Robert Southwell*.] Having been vilified and bespattered without doors, I desire the thing may be examined. On *Thursday* the House rose about two of the clock; a Gentleman, a stranger to me, and I to him, came to me, and asked me, "What was done as to the evidence of Sir *Edmundbury Godfrey's* murder?" I said, "It was hard for me to say, till I turned to my papers." I remember Mr *Dugdale* brought me a short paper, as things occurred to him, and I was commanded by the Lords to put it into form, and better *English*, which, for want of Mr *Dugdale's* skill, was obscure in the expressions and penning; a copy whereof was given to Mr *Dugdale*, who set his hand to one for the Lords, and had another for himself and the Attorney General, and it was to be kept private. At the Council, Mr *Dugdale* was asked "what they said in the Country of Sir *Edmundbury Godfrey's* murder?" He told *Ewers*, "this will spoil our design." "No" says *Ewers*, "*Godfrey* was a severe man to punish such as go to lewd houses, and it will be thought done by some such persons."

Some Gentlemen said, this was a great and notorious omission, to leave this out of *Dugdale's* information.

Sir

Sir Robert Southwell.] This was a chance question, and not set down in *Dugdale's* papers. There was a letter from *Harcourt* to *Ewers* to this effect; "This night *Godfrey* is dispatched;" the letter bearing date the same day that *Godfrey* was murdered, but his body not found, nor the thing known till three days after. This fosters the matter, and shows from what quiver the arrow was shot. Says Mr *Dugdale*, "I informed not the Committee of Secrecy of this matter now, nor you, having more in my head than I could say." And so he did not tell the Committee of it, nor me. None of the nineteen Lords who were present at the Council heard it from *Dugdale*, and it was omitted. So I told *Dugdale*, "That he should declare this in the House of Lords." This Mr *Chetwynd*, who has made this noise about my obscuring this part of *Dugdale's* information, is of a worthy name, and I could wish that his qualities were so, for he declared to the Lords, "That there had been foul play by Sir Robert Southwell." *Dugdale* was interrogated by the Lords about it; where he said, "he did not declare it to the Lords of the Council, for it was a chance question, and what he had said to the Lords was all taken by Sir Robert Southwell." Notwithstanding this, Mr *Chetwynd* proclaims me in coffee-houses, and the Court of Requests, not to be so innocent of the matter as I make myself, and acquaints several Members, "that there is one within these walls that has suppressed the evidence of *Godfrey*, &c." so that very happily I have the opportunity of justifying myself here. Mr *Dugdale* gave the clearest Evidence that ever I saw; but if ten questions were put to him at once, he must give ten half answers. I aver it, and will swear it, where it is proper, that the Minute-Books of the Council are free from any device or forgery, and that all is truly entered. I am sorry that any Gentleman's misfortunes should be a comfort to me, as your justice upon Mr *Sackville*, &c. I have, as much as in my capacity I could to the King, often at his elbow, said, "Pray, Sir, observe this, and that." And when it appeared by the evidence *Dugdale* gave against *Ireland*, that the evidence in Court was true, if *Dugdale* had had as much

to

to say against *Pickering*, he had gone to pot with the rest. It is well known to many worthy Members, that I took pains in decyphering *Coleman's* Letters; and the *Inter-nuntio's* Letters, by force of industry, I decyphered, and endeavoured with all the pains and views of my heart to prepare that metal which you stamped with a Vote. The two brothers of Sir *Edmundbury Godfrey* were with me night and day, and I have been a third brother to them, in my help to discover, &c. And I appeal to them, what endeavours I have used. At Mr *Coleman's* Tryal, I gave evidence of the Papers and Letters, &c. and have done all to acquit myself as a true man, and a Protestant, and I beg the justice of the House in my vindication, and I shall stand and fall by the truth of what I say.

Mr *Seymour*.] You have had a large narrative from this Gentleman, and if he has been tedious in it, the occasion may excuse him. Rewards and punishments are the support of Government. You have done justice to Mr *Sackville*, whom you have expelled the House, &c. and it will as well become your justice to vindicate this Gentleman. The Plot is, in some measure, a debtor to this Gentleman's discovery. The Lords have, in some measure, done him justice, and what becomes your justice, is to refer this matter to a Committee, to examine the truth of it.

Mr *Powle*.] It becomes your justice, that at least the reward of doing well may be of good report. By this Gentleman's carriage in other things, you may easily believe this to be a scandal; and if, upon examination, it appears to be so, you will punish the scandal—Do him right, and search into the matter.

Serjeant *Maynard*.] I must say, we should have been utterly in a mist, had it not been for this Gentleman's endeavours in decyphering the papers, &c.

Sir *William Coventry*.] I would not only have the innocence but the merits of the Gentleman appear; therefore I would have the matter heard in a full House. I would hear it, and make but one day's work of it, and Gentlemen need not spend their compliments farther upon him.

Ordered, That it be heard at the Bar [on *Friday* next.]

Colonel

Colonel *Titus*, upon complaint of the irregularities of *Leicestershire Election*, said,] Corrupting the Parliament is poisoning the antidote, &c.

[The Bill of Attainder against the Earl of *Danby* was read the first time.]

Thursday, March 27.

Colonel *Titus*.] *Philip De Comines* says, "Always in *England* there is a pretence of War either with *Scotland* or *France*, to raise Money." And it is an easy matter to be pretended that so many men as 120,000 are to be landed in *England*, but their raising is not so easily obscured. When these things are spoken of, the next consideration is Money. The Merchants hear no preparations in *France* by their letters. Let this news go off till we have sure ground for it, but however let the Militia be in a good posture, &c.

Mr *Law* spoke much to the same purpose.

A Bill from the Lords, for the better discovery and more immediate conviction of Popish Recusants, [was read the first time.]

Mr *Sacheverell*.] This Bill seems rather an ease to the Papists than a punishment. The Bill, as it is opened, hath four or five great points in it, which this House ought well to weigh. By the Bill, it is in the power of a Papist, if he can find one Affidavit-man, to convict every Member of the House, and he shall have no remedy to redress himself. The Question is not stated upon evidence of information, but "if the Justice suspects a man, &c." and you have been fully shown, that Justices have been made by the Popish party. If this Affidavit comes back to the Sessions, the person may never hear of the Summons, and be convicted. Whosoever is thus certified, is to suffer all pains and penalties of a Popish Recusant; it gives him no power to clear himself by conformity, as by the former Acts; and he is not exempted only from the penalty of Recusancy by doing such acts, &c. but has a toleration not to come to Church.

Sir

Sir *Thomas Lee*.] *Sackville* has not spoken to throw out the Bill entirely, and therefore not orderly. I would retain the Bill, if it were but for the title's sake.

It was ordered to be read a second time.

A Petition of *Richard Derham*, Esq; complaining of Sir *Edward Harley*'s undue return for *Radnor*, was read.

Mr *Hampden*.] This Motion seems in the nature of an action brought for a debt, when the party owes nothing; and when it is proved there is no cause of suit, there lies an action of the case against the party for unjust vexation. Refer the Petition of *Derham* to the Committee, and if it should prove so, I hope you will make some example of *Derham*. In the Petition is a bare general complaint, and no particular of the complaint. I never saw a Petition of the like nature before.

[It was ordered to lie upon the table.]

The Bill of Attainder against the Earl of *Danby* was read a second time.

Mr *Booth*.] I like this Bill very well. *Danby* deserves this punishment, and more too. I move for an addition to it, to make it more effectual to your end, "That all fraudulent settlements and trusts, whereby the King is defrauded of his right, he having struck tallies to a great value in a few days, which may be put in trust, may be voided." If you make no provision that persons concerned in these trusts be punished, all you do will be to little purpose; therefore I move "that such may suffer as felons, that do not in a certain time reveal such trusts."

[The Bill was ordered to be committed.]

Then an ingrossed Bill from the Lords, was read, for banishing the Earl of *Danby*, viz. "By perpetual banishment and exile, not to sit in the Lords House, nor enjoy any Office, &c. If he comes into *England* after the first day of *May*, 1679, Treason, or be found in any part of *England*, Treason, and no Pardon but by Act of Parliament. All correspondence with his wife and children forbidden, unless about his Estate. If they hold any other correspondence with him, they shall be punished as for corresponding with Traytors. Letters sent to him, or received from him, shall, within ten days, &c. be showed to one of the Secretaries of State. All trusts for him of Patents, Gifts, or Grants since *December*. And if he renders himself before

fore the first of *May* next, the penalties of this Act to be void."

Sir *Harbottle Grimstone*.] To the intent I may speak orderly, I shall move to throw out the Bill. We have impeached *Danby*, and sent up our charge, and he has prayed a day to answer, and you have now agreed to a Bill of Attainder; but this Bill from the Lords is not an Attainder, but a compounding for Treason. *Danby*, by his flight, has confessed himself guilty of Treason, and this Bill is as much as to say, "Cut off his ears for Treason." And this is the way to countenance Traytors, rather than discountenance them. A Traytor is a Traytor. What mercy he may find upon tryal, I know not, but I move you to throw out the Bill.

Lord *Annesley**.] This Bill is contrived by some person to have *Danby* fall easily, that he may come into his employment, and do the same things he has done. I would lay aside this, and go on with your own Bill.

Sir *John Knight*.] This Bill is unjust to Lord *Danby*, for he may be innocent upon tryal; and unjust to the Commons of *England*. He is fled already from Justice, and you give him *May-day* to appear.

Serjeant *Ellis*.] This is such a Precedent to compound for Treason, as I never yet saw. But because the Lords have made some steps, I would not throw the Bill out, but go on with your own Bill; and, to maintain a good correspondence with the Lords, I would give this Bill another reading this day fortnight.

Sir *Thomas Player*.] I am for throwing out this Bill, and presently. You have had Precedents of Lord *Clarendon*, &c. The delay of that Bill did almost *in terminis* produce the effect desired, which was, composition for Treason—Delay it for a month, and then something may happen of composition. If this great person (*Danby*) had any thing in him of the greatness of the men of old, the *Romans* or the *Grecians*,—if he loved his country, it might be a punishment to be sent from it; but sending him away from a

* Son to the Earl of *Anglesea*, in 1690, and was great uncle to the to which title he succeeded on his last Earl.
father's death in 1686. He died

country he loves not, is no punishment. If we must endure the miseries likely to be upon us, by his means, let him endure the punishment the Law has provided for him.

Serjeant *Maynard.*] It is all one to your purpose, to put the Bill on presently, or to delay it; it will be all the same fate. The premises in the Bill are very far granted to your advantage. No man, I believe, will call for this Bill in haste; and you may lay it by.

Sir *Thomas Lee.*] If the Lords shall think fit to reject your Bill, because it is too much, had you not better have something than nothing? Possibly some of the Lords may be more afraid to see *Danby* in the Lords House again, than we, or at least, than I am. In matters of proof, things are not yet before us, but in the Tryal they will be; and this Bill of Banishment is too little a punishment for his crimes. The same arguments may be used upon the same Bill, and I fear there will be the same consequence, that neither of the Bills will take effect.

Sir *Francis Winnington.*] Flight from Justice implies confession of the fault, and he would have the same judgment if he stood his Tryal, and that is an argument for the reasonableness of your own Bill. If we agree to pass the Lords Bill, we falsify our own accusation. For first, here is less punishment in it, and it diminishes your Articles, and plainly says, you have done unjustly to impeach this Lord. By this means, the party impeached is in *statu quo*, &c. and it is a reflection upon the Impeachment of the Commons of *England*. I would have the Bill lie upon the table some time, but not throw it out, that there may be a good understanding betwixt us and the Lords; but not to order it a second reading.

Sir *Thomas Lee.*] I would be satisfied, whether it be a rejection of the Bill, without expressing, that it was rejected by Vote.

The Question for a second reading of the Bill was carried in the negative, and, upon a second Question, it was rejected.

Friday, March 28.

Sir *Robert Southwell* acquainted the House, That the Lords had entered a large narrative of the matter relating to Mr *Dugdale*, &c.

&c. in his vindication, and have since passed a Vote, to put him into the trust of sorting all their Papers in order.

Mr *Garroway*.] I would be satisfied in one point, whether, in the prosecution of this, *Southwell* did not discover some of *Dugdale's* Evidence, which as yet ought not to come upon the stage?

Sir *Robert Southwell*.] I do declare, that even to gratify the imagination of vindicating myself, I would not prejudice the Evidence. Vote me but an innocent man, and do what you please.

Serjeant *Ellis*.] The Gentleman has shown his ingenuity in this matter, and I would vote something in justifying his integrity, and give him the Thanks of the House.

Mr *Harbord*.] I was not here, when this matter was first complained of, but I have the narrative in writing, and I have thought of it, and I find that Mr *Cbetwynd* has proceeded rather through zeal to the Public, than malice to *Southwell*. But this will fall upon Mr *Dugdale*, who has behaved himself very well. I would refer it to the close Committee. I have advised with the King's Counsel at Law, and they think it by no means for the service of the Nation that this thing be stirred now.

Sir *Thomas Meres*.] I would let the intrigue of the affair sleep for the present; but yet I would do right to *Southwell*, who has some mark of reflection upon your books. But if you make some Vote that *Southwell* has done his duty to the King and kingdom, &c. it will fully vindicate him.

Resolved, Nemine contradicente, That this House is fully satisfied in the integrity, diligence, and faithfulness of Sir *Robert Southwell*, a Member of this House, in the taking and entering the Informations of the Witnesses, touching the discovery of the Treasonable and Popish Plot, and of the Murder of Sir *Edmund-bury Godfrey* by the Papists; and that he hath deserved very well of the King and Kingdom, by his pains and care taken therein.

Saturday,

Saturday, March 29.

Lord *Cavendish* moved to take into consideration the disbanding of the Army.

Mr *Harbord*.] Gentlemen that live in the parts of *England* where the Army has been quartered, are sensible of it, for it is, in effect, free quarter. They will have so much a day paid them to exempt houses from quarter, &c. If they take a penny, they may a shilling, and so to the end of the chapter. I desire that you will appoint a day to consider of discharging them, else you will have no security for your Laws to be executed, &c.

Sir *Nicholas Carew*.] I think it well moved, though it is a hard matter to pay for one thing twice over. The Army was raised for the Plot. I would enquire whether the Army has been upon free quarter, against the Petition of Right.

Mr *Bennet*.] This Army is a limb of Popery, set up by this great Minister, who is not yet quite out of the way.

Sir *Harbottle Grimstone*.] This Motion is very seasonable, to ease ourselves of the intolerable burden of quartering soldiers. I must say, that the Army was raised before the Plot was discovered. The Law to raise that Army, by what interest and means it was gotten, you know. The Army of *Scotland* may be raised to march hither, or wherever they shall be sent to. Consider, pray, that Army, and this too. Appoint a day for it, and then we shall come prepared to speak to it.

Mr *Vernon of Monmouth*.] I am apt to believe that the Army has no free quarter. They have nothing to live upon, and, in compassion, people do relieve them. They are at a thousand pound a day charge. In their Orders from the Duke of *Monmouth*, they are only to quarter in Public Houses of reception, and had the complaints here been mentioned, they might have had relief, had they been known.

Sir *Henry Capel*.] Now we have no War, it is a wonderful thing that we should have an Army. It cannot be thought

thought otherwise of an Army, but to snatch the Government out of the King's hand. By the Petition of Right, they ought to be quartered in no man's house. If we were in War, they might be fitly quartered, &c. but I would lay aside repeating the misfortunes we have been under. We have done great things already. A great man is fallen, *Danby*. (*Some called out, "but falling."*) This is the proper place to complain of these things; and appoint a day to debate this matter.

Mr *Vernon*.] It is said "that the soldiers ought not to have free quarters." The Petition of Right is general, upon none of the King's subjects; but that which entitles them to be quartered in Inns and Alehouses is, because they have money in their purse, and they cannot deny to receive them; from thence they may come into our houses, when the Inns are full. I move, therefore, for a day to consider it, &c.

Colonel *Birch*.] I am glad and thankful for this Debate. I did believe the Army to be a cheat when it was raised; but it went by the telling of noses in that Parliament, and then it was done—The Nation need not now be afraid, when they have so many Gentlemen of good Estates at the head of them—I move, that on *Tuesday* next you will consider of disbanding this Army.

Mr *Scymour*.] I find the House is agreed on what it would have, but wants words to express itself by—(*Upon the Speaker's unreadiness to frame the Question.*) I shall offer words for a Question, viz. "That the House will take into consideration the disbanding the Forces raised since the 29th of *September*, 1677, that remain undisbanded; and that the Commissary of the Musters, and the Paymaster, bring in an account of all the regiments, troops, and companies raised since the said 29th of *September*, 1677, or brought over from beyond the seas, that remain undisbanded, and what is due to them."

[It was resolved accordingly.]

Mr *Oates*, at the Bar, accused Sir *John Robinson*, [Lieutenant of the *Tower*,] who was in the Lords Lobby when he was there, before the rising of the last Parliament—*Robinson*

said, "These informing rogues trouble the world of late, but that he had spoiled one informing rogue already." In time I became acquainted with *Everard*, who accused *Robinson* of this, and have brought him to make it good.

Mr *Everard*, at the Bar, craved leave to read what he had to say in his memoirs.] There was a pretence raised by one *Dallison*, a servant of mine, that I should have killed the Duke of *Monmouth*; whereupon I was ordered to be committed to the *Tower*. Mr Secretary *Coventry* ordered the Messenger to carry me. Where being at dinner, with Sir *John Robinson*, he discoursed of his son, then in *France*, and enquired, by his Chaplain, whether I was a Papist, and in Orders. I sent to see the Warrant, and thought it but a formality; but finding myself locked up, day and night, I spent my time in reading, and expected the issue. Then he gave an account of the Lady Anne Gordon and Peter Talbot's acquainting him with a design of raising men, and surprizing a Port in Ireland, as is seen at large in his printed Relation, &c. *Robinson* took the heads thereof in his Table-book, and next day, when I would have particularized the Plot, *Robinson* broke me off, and said, "That he cared not what women said; but unless I would confess farther of the conspiracy against the Duke of *Monmouth*, he would rack me." Whereupon I desired the Keeper and his wife, that they would pray for me. I know not what the rack was, but the Keeper called it "the Duke's daughter." Soon after, I was sent to *Whitehall*, to be examined, where I was still urged to confess what evil design I came into *England* upon, &c. as in the printed Relation.

Mr *Oates*.] *Robinson*, in the Lobby, said, "Is it not a brave thing, that such a fellow should have a guard to attend him, like a General at a muster?"

One *Richard Hawkins* gave some farther information as to *Everard*.

Sir *John Robinson*.] I never was but in one Plot, and that was for Restoration of the King, and I know nothing of what *Everard* says, &c. I had a Warrant under the King's hand for his commitment. He confessed nothing of the Plot to me, but talked a great deal of gallimawfry stuff. I have fed him, and cloathed him, whilst he was in the *Tower*, and, I thank God, I am not yet paid for it.

Sir *William Coventry*.] I rise not to argue, or debate, but to tell the matter of fact. Mr Secretary *Coventry*, being

ing ill for some days past, desired me to come to him, and acquaint you, "That, by the King's command, *Everard* was committed to the *Tower* by his Warrant; and he hath in his hand several papers, which may be useful to the House in this matter, but without the King's leave, he could not give a full and satisfactory answer as to *Everard*'s commitment." There is one paper delivered in by *Sir John Robinson*, under *Everard*'s hand, of his satisfaction in the matter before you. All I had in command from the Secretary was, to acquaint you, that as soon as he has the King's leave, which he doubts not of, he will acquaint you, &c. when his health will permit him to come to the House.

Sir John Robinson denied every thing of threatening *Everard* with the rack. The farther Debate thereof was adjourned to this day sevensnight.

[Adjourned to *Tuesday*.]

Tuesday, April 1.

Complaint being made, that *Sir Francis Winnington*'s Speech was dispersed in Coffee-houses, it was referred to a Committee.

On the disbanding Bill.

Mr Garroway.] I would have you declare them disbanded, and they are disbanded, and then see who dares head them. Till then, and till you have better security for their disbanding than you had before, I would have no thoughts of Money.

Sir Nicholas Carew.] See the success of the Bill of Attainder that you now are sending up against *Danby*, before you take Money into your consideration.

Mr Kingdon [Pay-master] gave an account of what was due to the Army, &c.

Sir Thomas Meres.] Whatever the intention was, the continuance of the Army was a great disadvantage to the Nation, and why they would not accept of the Money, the last Parliament, for disbanding them, I know not. I move that we may be rid of them now, whatever the former intentions were.

Mr Garroway.] I would declare that this Army is disbanded, but kept up to the oppression of the people.

They have exhausted the Country, contrary to Law, and I hope you will enquire how the poor people have been abused by this Army, and show your detestation of an Army. Pass a Vote, therefore, to have this Army discharged, which has been kept up contrary to the Laws of the Nation.

Mr *Powle*.] The last Parliament, I opposed the raising and continuing the Army as far as my ability went, but as to enquiring into the miscarriage of the Army, I would not do it yet. I would not put them upon extremity. I think, if we had had no Army, we should have had no Plot, and the last Parliament thought it the prudentest course to dismiss them, and let them go home quietly; and then we were for punishing the authors of the counsel that raised them. There is great mercy to the Earl of *Danby* in that Bill now sent up to the Lords—And more persons may be come at easily. If that Bill pass not, I shall not in my heart go along with any thing else. For accounts of the Treasury, the Committee will give you a true report. Mighty sums have been struck tally for, since the Lord Treasurer went out of his place. Two or three days time will illuminate our eyes how things have gone, and it may be reported on *Friday* morning.

Sir *Robert Howard*.] I am for no Votes in this matter, and for saying nothing. One sort of people should have no reflection upon them, and that is, the common soldiers, who went willingly against *France*. Those ill counsels, that the Nation was never the better for 1,200,000*l.* expence; that thing, and nothing of a War, I would refer to a Committee, to bring it fairly before you.

Colonel *Birch*.] I am of the same mind I was the last Parliament. I would give no encouragement to keep up an Army contrary to an Act of Parliament. This will so far fright the people, that they who raise an Army, when there is no need, will scarce raise any when there is need. With all the fair words imaginable, I would part with these men. If the Plot had taken effect, the Army must have fallen to the next person upon the Throne, and he would

would have made use of them with a witness. It is moved, "that this should be referred to a Committee," but I know not what to refer. You are told, here are so many regiments undischarged; this is no more than to take his word that brought the account in. When I was employed in these things, they were more particular. (The King's business is generally so done.) Money is given in a lump to the Officers to pay the soldiers. No man can say what is due to them, when the Country is paid, and that is well, and the Officer to have the rest. I was, am, and shall be, for using all the kindness to persons concerned. This Army was discharged by Act, &c. in July last; now the Question is, whether you intend those that were added since then. Were they taken in when the King said they should discharge? I would know the use of these men, whether all these men have been taken in since the Act for discharging? Let them be recruited as much as they will, and they will bring it to you to pay. I would know to what day you will pay them? And then, whether you will pay their arrears to those taken into service since the discharging Act?

Mr *Vaughan*.] The last Parliament was sufficiently sensible of the danger of the *French*, &c. and made Addresses to the King for War, &c. and all were rejected, and the Parliament prorogued; and with the same scandal next Session the *French* had got almost all *Flanders*, and then we raised an Army too easily, which now stands a terror to all our properties. Then we gave Money to discharge them, and now the Army stands still. Let that objection be answered of the Act for discharging, and what security we shall have, if we give our Money for the future, &c. It is said, "that now those counsels are rejected;" but you have a Precedent upon you, that a Law has done no good to discharge them. But it is said, "we must not provoke those Gentlemen, &c." but you must declare, that there was a Law made for discharging the Army to justify yourselves.

Mr *Paul Foley* *.] If you refer it to a Committee, it is

* Great Uncle to the present Lord *Foley*, and, after the Revolution, twice chosen Speaker. He died in 1699.

not fit for us to vote who are paid, or who not paid, but let the Committee enquire into it.

Sir Thomas Lee.] I would not rise so barely, without putting some mark upon this Army. If you do, you will never want an Army, for occasion to give Money. In the case of the Petition of Right, when the Nation was under great oppression, one complaint was, of quartering soldiers upon inhabitants of this Kingdom, and compelling them to sojourn, though they paid for their own provision. I really believe, that scarce an Officer or soldier, that were not Members of Parliament, but were possessed with an opinion, that they had absolute right to be at Inns and Ale-houses, and to pay what they pleased for their quarters, and that the inhabitants were bound to find them fire and lodging, &c. This arose from the misfortune of those times in which *Cromwell* governed by an Army; then they did it, and this Army thinks so too; here they are, and there is an Act to disband them, and they are not disbanded. I think the Petition of Right is invaded, and I think the least you can say, is to put some censure upon it, as you did formerly, &c. that the keeping up a standing force is a Grievance to the Nation, and to pray the King, that hereafter it may not be. Where an Army is a number of men, by what name or title soever you distinguish them, and the Law cannot govern them, it is necessary you take some general resolution, that the continuance of these Land forces is a Grievance to the Nation.

Sir Francis Winnington.] Take care of this now, and nobody will dare to advise such counsels for the future. But out of commiseration to the soldiers, I hope you will find some way to pay them; they are not so much offenders, as they who advised the King to continue them after an Act was made to disband them. Ignorance begets commiseration, from the severity of the Law. After an Act passed for disbanding, &c. it was a dangerous thing to keep them up, without new Commissions. As for billeting of them, since the Petition of Right, 1642, the late King declared that none of his subjects should have soldiers

ers imposed upon them by quartering of soldiers, but upon reasonable prices, and the Inn-keeper is bound to receive them, but not to sojourn with them, half a year together. They are to be *in hospitio* only, not to dwell with them, whether they will or no. Now whether, will you refer it generally to the Committee, or give instructions? I think it better to give instructions. And, though not with reflections upon the Army, yet to consider, that after an Act of Parliament they filled up their companies, and did it voluntarily. You should be a little stiff in that point. I am for an indemnity, for many of that Army were troubled in their minds about it. Therefore I move you to give your Committee instructions, to divide such new-raised from the first raised. The Army being to be twice paid, let us be as good husbands for the people as we can. I would have a distinct account of the first, and the new-raised, and put a mark of distinction upon them that durst presume to list themselves after the Act, &c.

Mr *Papillon*.] In the last Parliament we found but four dead, of all that were sent into *Flanders*, in the Muster-master's rolls, and to the common soldiers there was no more due, than to their landlords.

Sir *John Talbot*.] As to the men taken in since the Act, &c. I thought that to be a great fault. To put in new recruits, I thought that not reasonable. The Act said, "they were to be disbanded by the first of *July*," and instead of that, ordered *August*—And till the latter end of *September* my men lay by the water-side to be transported for *Flanders*, and should I not keep my troops full, I could not have answered for part of a troop; not with design to cheat—Would you have the man lose it, or the Officer pay it?—It is impossible to have an Army without some complaint, especially when there is no martial Law. (*At which many laughed.*)

Sir *William Coventry*.] I think you are about a good work in disbanded this Army, a thing long wished for, and has been long obtaining. When the Nation had no use of this Army, nor saw any, every man was for disband-

ing and paying them off. I think the Law has been broken by keeping them up, but I would not give an alarm to those who have arms in their hands. Be rid of them first. Here is a Law broken indeed, but not by the soldiers, nor the Officers; they act according to directions given them by the King, and there are Laws for hanging those who desert their Colours. I know not how they could get away, and seeing they had no directions, I think neither the soldiers nor the Officers to blame. Many have been utterly undone by them, and both Officers and soldiers bewail it. Now before you consider of the uttermost of what the pay will come to, the sense of the last Parliament was, that they should be paid in their quarters; but that they be discharged in the first place—And that was a prudent way. The soldiers could not help their being together; the blame must be in some other place; therefore I move as before.

Mr *Sacheverell*.] I see the sense of the House is, that the Army should be paid off, and therefore I shall not speak against it. You were told, the last Session, “that so long as the House would pay for the continuance of a grievance, they will never want one.” But I cannot but observe, that a House of Commons is now got in fear of an Army, whenever that comes to pass—And now you are afraid of telling them it is illegal that they were kept together. The last Parliament were not afraid to say so; and shall this brave and noble Parliament? When the *Blackheath* Army was raised, the use of that was showed you here, and shall not this come under the same circumstances with that? That Army was not raised by Act of Parliament, but raised for the assistance of the *French*. Even at that very time, that Parliament saw the Articles of War, how that Army should be governed, and sworn even to what else should be. It was then said in defence, “that those Articles were applicable to the forces only which were to go beyond sea;” but they were for the guards here. One Article was, “they should burn no stacks of corn or hay without command from their Officers.”

cers." Another, "Whosoever should violate safe conduct, the Officer should be subject to a Court-Martial to answer it." That tender House of Commons voted the continuance of that Army illegal, &c. and if you dare not say now, "that it is illegal, and a Grievance, to keep up any forces, but such as are established by Law," farewell all your rights!

Mr *Garroway*.] Pass such a Declaration, and with the Money do what you will.

Resolved, That the continuing of any standing forces in this Nation, other than the Militia, is illegal, and a great grievance and vexation to the people.

[*April 2.* omitted.]

Thursday, April 3.

[Mr *Sackville*, upon his Petition, was discharged from his imprisonment in the *Tower*.]

Sir *Henry Capel* informed the House, That the Committee of Secrecy have been informed of a person, who keeps correspondence with the Lords in the *Tower*; the Committee thought it their duty not to name the person, till he be secured. I suppose it is in the power of the House, if the name of the person be given privately, to secure him by their Order, and then we shall name him.

Mr *Hampden*.] If any such person be in the Speaker's Chamber, you may seize him, without a written Order, by the Serjeant.

Mr *Sacheverell*.] I am one of the Committee, and perhaps you may have another occasion for such an Order, and as for that Gentleman you are moved about, you may have him. The Serjeant is gone up to secure the passage; you may make the Warrant, and secure him immediately.

The Order was written, and signed by the Speaker.

It was moved by several, "That some of the Committee of Secrecy might go up and examine him, it not being for the service of the House to have him examined at the Bar."

Mr *Treby** reports, [from the Committee of Secrecy,] the Articles against the five Lords in the *Tower*. That the Committee of Secrecy had sat daily, and had made some progress in your com-

* Afterwards Attorney General.

mands. There has been no more deliberation used, than what is for your service—*And so reads the Articles of Impeachment—For which see the Report.*

A Gentleman interrupted the Report, by taking exceptions that Notes were taken of the Report.

Mr *Mildmay*.] I would not have it that Protestants should be discouraged, nor Papists encouraged. Gentlemen will make a modest use of what they write.

Sir *Francis Ruffel*.] It is the right of every Commoner of *England* to have your Votes communicated to him, and it were better if your Proceedings were printed.

Mr *Garroway*.] The Motion is, “That there may be no writing, &c.” It may be, a man has not strength of memory to recollect the Report; but for shortening the matter, till the resolution of the House be known in it, I know not what to say. If what is read of the Report be entered into your Books, and you deny a Member to write, it will be strange. If so, then it must not be read at the Table.

Mr *Treby* went on with the Report.

Sir *Nicholas Carew* moved, That Sir *George Wakeman* * might be added to the Impeachment.

Mr *Garroway*.] I would not prescribe the Committee whom they should accuse, nor put names into a list, before they know of matter against persons, and have it before them to accuse. Here is matter before you now, and will you not consult those Gentlemen, whether they are ready with their Evidence, or will require farther time? If you send it up to the Lords now ingrossed, it may be the Lords in the *Tower* will call for tryal, and you not be ready.

Serjeant *Ellis*.] The Committee did not think of *Wake-man*. He may be added to the Impeachment, if you please, but he comes in, in the words, “Divers others, &c.” We have some Witnesses to send for, but we know not how they will come secure—But we shall from day to day go on; and you may cause the Impeachment to be in-

* The Queen's Physician.

grossed; and the Committee will take all care to prepare the Evidence, and that it be ready; of which a great deal is ready; but if others are to come a hundred miles off, take your own way. I have no Order from the Committee to say this; but I thought fit to tell you what they have done.

Mr *Hampden*.] After the Articles are carried up to the Lord, the persons impeached must have time given them to answer. You may cause them to be ingrossed against Monday; and, I must say, it is as strongly framed as ever I saw. In the mean time, let the world have the satisfaction to see what we have done.

Mr *Boscatwen*.] Those persons you impeach, do bring in other persons they have combined with (*simul cum.*) I would not have you order the Articles to be ingrossed, till you hear from your Committee, who are withdrawn above, and are examining Mr *Redding*.

Sir *Robert Howard*.] One word in the Impeachment seems to call for *Wakeman's* name, and that is the word "poisoning."

Mr *Treby*.] If the House does command me to inform them of any transactions of the Committee, then I am discharged of secrecy. Persons named in the Impeachment are not there, for names sake; but for that, several kinds of men, of all professions, Cardinals not excepted, had a hand in the Plot. There is but one competent number of men named for general appearance, what they are. As for *Wakeman*, you may put him in if you please.

Sir *Thomas Player*.] You were told that but one Cardinal* was engaged in the Plot, but this is another; *Ireland*; treated at *Rome*, by way of his Eminence, and treated upon the knee; and may all Cardinals engaged in this Plot come to that end he did! This I say for your diversion only.

Serjeant *Ellis*.] I believe he was forgotten at the Committee, for a hundred were rejected.

* *Philip Howard*, commonly called Cardinal of *Norfolk*.

Mr *Treby*.] There is Evidence sufficient to make him specially impeached like the rest, but he happens to be rejected amongst many others, though there is sufficient Evidence against him.

Sir *George Wakeman* was added to the Impeachment.

Friday, April 4.

The Bill of Popery from the Lords, [was read the second time.]

Sir *Thomas Meres*.] I am afraid that this good spirit of the Lords against Popery should recur, if you reject this Bill. It is objected, "That this Bill will hinder former Laws against Popery," but it does not; it is only, "For more speedy conviction of Recusants." We have new heavens now and new earth. We are not upon the same principles as in the last Parliament, when our hands were slippery. Here are better hands now. Popery for ten years together was a trade; it cost us at once 600,000*l*. It was said by a witty Gentleman, (*Waller*) the last Parliament, "That Popery was the King's meadow. We must not plough it up, but we may cut the grass from time to time." This Plot has changed that principle. This Parliament will have good Bills.

Sir *Thomas Clarges*.] I hope the Lords and we may lay our hands together for this great work. But this Bill of the Lords, &c. is only for subscribing a Test, &c. which any libertine Papist will take, and a conscientious Papist will scruple to take an Oath upon the Holy Evangelists. In my time, I remember that the former King sent not an Ambassador abroad, without a Chaplain. Nay, in most places, the very Consuls of Trade had Chaplains. And now Ambassadors have none to give the Sacrament, to the great dishonour of our Religion. Dissenters of late have been convicted as Papists, by that Statute only for Papists, and so very few Papists have been convicted.

[The Bill was ordered to be committed.]

Sir *Thomas Lee*.] I must inform the House, that the Committee of Secrecy desire that Mr *Brent* may be sent for,

for, who belonged formerly to the Treasurer's Office.

[It was ordered accordingly.]

The Speaker.] I must inform the House, that the other day, when you caused the doors of the House to be shut, &c. a servant of mine saw a letter thrown out of the window, into the Lobby, by a Member of the House, and the letter was taken up and carried away.

Mr *Powney*.] My wife being with child, and in expectation of my coming home to dinner, I wrote her a note by my footman, that I could not come.

Complaint was made, "That Mr *Oates*'s examinations were erroneously printed."

Mr Secretary *Coventry*.] This matter, which you caused to be kept secret, may as well have escaped from the Lords, as from hence. But I would have the Committee to examine how the Printer came by it.

Mr *Hampden*.] The Printer has printed several examinations taken before the High Court of Parliament, and the Lords may take it from you, to apply the offence to yourselves. The Printer is in the hands of Justice, and that changes the case.

The thing went off.

The former Debate resumed. Mr Secretary *Coventry* contradicted the allegation "about Chaplains, &c." and named several Embassies that had Chaplains.

Mr *Sacheverell*.] I must acquaint you that the secret Committee are defective in some things. They have had papers from the Lords, but they are informed of a very considerable and material Letter of Lord *Stafford*'s. One they have, but not that which the Committee has proof of. One of these Mr Justice *Lane* sent out of the country.

Sir *Robert Southwell*.] I was in waiting, when Justice *Lane* and *Congreve* sent up Letters, which were found at Lord *Aston*'s, and I aver, that I never saw any of Lord *Stafford*'s in those packets, but a short one of the 8th of *October*, and I know of no more.

Mr

Mr *Sacheverell*.] I did hear of such a Letter, and I acquainted *Southwell* with it, and he helped us to a copy of it. Since that time, I have written down to Justice *Lane*, and I have an account of another Letter of Lord *Stafford's*, which *Lane* has a receipt for, and will prove it.

Mr *Garroway*.] The Gentlemen will aver that this is not the Letter they received. It is of great concernment, and it will be made good, &c.

Mr *Sacheverell*.] If any of the Committee will say, there were two Letters of Lord *Stafford's*, then one is wanting. I would have it enquired into.

Sir *William Coventry*.] I offer it, that you will lay your commands on the Gentlemen of the secret Committee, that they may attend the Council, and go from place to place, to trace this Letter out.

Mr Secretary *Coventry*.] I remember but one Letter of Lord *Stafford's*. I could not forget it, if there were any extraordinary passages in it.

Sir *Eliab Harvey*.] I believe some Letter was slipped in, and another slipped out. You may easily trace it from hand to hand.

Mr *Sacheverell*.] Now I think it time to speak plain. I would know whether some Gentlemen have not heard the same from Justice *Lane*?

Mr *Chetwynd*.] I heard Mr *Lane* say, there was a Letter from Lord *Stafford*, that had this expression in it; "We are all undone; the Plot is discovered."

Mr *Swynfin*.] Being in some discourse of this Letter in the country, an understanding Gentleman told me, "That in a Letter to Lord *Aston* from Lord *Stafford* was this expression: "The Plot is discovered, all is done, and I am going to give notice that persons may have a care of themselves." I believe that Justice *Lane* and *Congreve* will concur in this importance of the Letter. I have heard in some of the news-letters, that those very words were in it.

Ordered, That Sir *Robert Southwell* do enquire and search whether such a Letter was delivered to the Lords, or can be found, and report it, &c.

Debate on the Lords Bill of Popery resumed.

Sir *William Coventry*.] One end of this Bill is detection of Papists. The next is their conviction. The Bill has a very good title, a good name, and a good aim. I would give no grounds to the Lords to say we slight what comes from them, conducive to the same end we aim at. It is objected, "that this Bill is in favour of the Papists." It is true, it is to some particular men, (as Mr *Huddleston*, and those who were instrumental in preserving the King after *Worcester* fight,) the same as in another Act, &c. Their number and quality not being a prejudice to the Peace, I would not have it thought, that those men, who had the good fortune to preserve the King's person, should have less estimation in this, than in the last House of Commons. I would not have it thought, that we are so set, and so keen upon Papists, as not to think it possible that some should do such service—Possibly they abhor none of their designs so far as to discover them; but if the discovery be ever so advantageous, and we shall not dispense with these persons, for ought I know, it is as much as to stop their mouths from any farther discoveries of the Plot—New severities—though they discover, they are ruined here, and ruined beyond sea—I would not have that discouragement put upon them.

Mr *Powle*.] Whilst we are driving all the Papists into a net, let us take heed they do not all get out. As the Bill is penned, a single Justice may convict a Papist, and a single Justice may discharge him; this is one thing of great moment. The way to suppress Popery is to let it stand as single as you can, and not bring in others. Protestant Dissenters are not liable to the Law of Recusancy, to catch them only. The connivance of Papists has come from mingling; and Papists have been spared, and they punished. I move, therefore, that they may have a separate Conviction, as the best way to suppress Popery.

Sir *George Downing*.] It has lain long upon my spirits: Since the King's marriage, one part of *Whitehall* has gone one way in religion, and another, another. I remember,
when

when it was proposed in the last Parliament for the King to marry a Protestant, it was rhetorically answered, "Can it be believed that the Defender of the Faith will marry one that is an Enemy to the Faith?" In the late Act of Parliament for the Test, &c. there was an exemption for nine of the Queen's servants, &c. and now it is justified by Act of Parliament. It will never be well, till you settle the minds of the People by a Clause, "that no Treaty of Marriage shall be for the future with a Papist," and so you will give no countenance to Priests to be at *Whitehall*, &c.

Mr *Garroway*.] (*jeeringly*) Since this has lain so long upon that Gentleman's spirits, as he says, I desire he may be ordered to bring in what he has moved, by a special Bill.

Mr *Bennet*.] The last Bill for giving the Test, &c. to the Lords and Commons, &c. was spoiled by the Clause to exempt the Duke of *York* from it, &c. But it is very well that the Duke is gone; and I hope he will keep himself out of *England*.

Mr *Vaughan*.] I would have such a Clause to the Bill as *Downing* moves for. When Popery is in the King's bed, that makes us have such strugglings against Popery.

Sir *Thomas Lee*.] Since Religion had like to have been given away in Articles of Marriage, I would prevent it for the future.

The Lords, at a Conference, delivered back to the House the Bill of Attainder of the Earl of *Danby*, &c. with some Amendments, for which see the Journal, together with the Commons reasons, why they could not agree to some of the said Amendments.

Colonel *Titus*.] This Earl of *Danby* is like a malevolent Comet, that does its mischief after it disappears. Therefore I would humbly address; for a Proclamation to seize him, for I hear he is about *Whitehall*.

Resolved, That an humble Address be made to his Majesty, to desire his Majesty to issue out his Royal Proclamation for the apprehending of *Thomas Earl of Danby*, &c.

Saturday,

Saturday, April 5.

Occasionally on *Windsor* Election.

Sir *William Coventry*.] When once judgments are passed, they must be obeyed; but we must make a difference between a judgment of *Westminster-Hall*, and a judgment of the House of Commons. If our judgments must be always Precedents, they must be the Laws of *Medes* and *Perfians*, not to be altered.

Mr *Powle*.] A Recovery of Land, obtained by Writ of Right, is final, and can never be brought to a review and rehearing. Trespass and Ejectment may be brought about by another Trespass and Ejectment. This Court judges *ex æquo et bono*, and is not tied to forms, but substance of the thing.

Mr *Sacheverell* reports, from the Committee of Secrecy, Mr *Reading*'s* examination, together with *Bedlow*'s and *Dugdale*'s Evidence.

Sir *Henry Capel*.] You have had an exact account of the matter from the Reporter, &c. It is now before you, what resolution you will take. There was great care and gentleness used to *Reading*, and the Committee gave him fair opportunities to declare the whole matter, and all reasonable arguments were used to prevail upon him. They confronted him with the Witnesses. It is under your consideration not to let the matter rest: A Conspiracy against the King, and another grafted upon that, to destroy the King's Evidence. The Committee offer you no opinion what to do, but believe that you, in your wisdom, will take some speedy consideration of it. I humbly move, that, there being so good Witnesses against *Reading*, he ought to be brought to Tryal speedily, and that all justice may be done to him, that the Nation may not be under this terror any longer; and that you will address the King for a Commission to try him forthwith; and I hope he will have judgment before the Lords Tryal.

Sir *Francis Winnington*.] I stand up to second that Motion. Since the House rose, I sent for a person, one

* *Reading* was a Lawyer of some subtlety, but of no virtue, who was employed by the Lords in the *Tower*. *Burnet*.

Dr *Salmon*, who says, “ That *Reading*, lying at his house for a month after *Christmas*, came late home at night from the Lords in the *Tower*, and would frequently say, he thought them innocent persons ;” but there happening a difference betwixt the Doctor and him, he heard no more of it. This being a matter of so general a Conspiracy, and *Reading* endeavouring to subvert the King’s Evidence, I desire he may be brought to justice, especially since he has written a Letter to the Speaker, “ That he has matters of importance to acquaint the House with,” and will say nothing of it to the Committee of Secrecy. I desire that his Majesty may be moved for a Commission of Oyer and Terminer to try him.

[Sir *Thomas Clarges*.] I expected from the Long Robe, that they would tell us, what this fact of *Reading*’s is in Law. I believe it is Treason in Lord *Danby*’s case, trinketing with *Bedlow*. In assisting and abetting Treason, all are principals—By this means all your Proceedings are blasted, and they will go off. There is Treason against the Kingdom, as well as against the King, as I have heard some Lawyers say.

[Sir *Thomas Lee*.] *Clarges* is mistaken. The Committee have made no proposition. What is moved, is only a private Motion from *Capel*. If it be thought fit, that a Commission of Oyer and Terminer issue out to try *Reading*, then it must be by prosecution of the Attorney General, according to the nature of the Evidence. He said, “ he could come out of the *Tower* at eight, ten, or twelve o’clock at night, and none of the guards dare stop him.” And he said, “ Sir *John Robinson* knows me, as well as I know myself.” I doubt not but *Robinson* knows why he had this liberty, or will call his Officers to account for it. *Reading*’s discourses are all towards truth, and he said, “ he would not have been the Counsel for the Lords, but that their innocence might come out.” And I hope that, upon Tryal, *Reading*’s will come out too.

[Mr *Powle*.] I offer to your consideration, whether this Address, &c. is not too early. *Reading* is at present in no other legal commitment than to your Serjeant, for
your

your Privileges only. And for you to desire a Commission, &c. to try one not legally committed—I offer to you, therefore, whether some of the Justices of Peace of the House may not commit him to a legal prison. And then make your Address to the King.

Mr *Garroway*.] Looking into the nicety of the matter, I think you may yet detain this Prisoner. I am afraid that all this trinketing of *Reading* is to get out of your custody. He has (it seems) friends in the *Tower*, and out of the *Tower*; but, till you can think a little farther of it, I would not have you part with him out of your hands. His great design is to advise the Lords, &c. and convey it to them when he is out of your hands. He cannot do it in your hands.

Sir *Thomas Lee*.] It occurs to me, that the Evidence Mr *Dugdale* gave against Lord *Stafford*, *Reading* showed to him.

Sir *William Pulteney*.] It matters not, whether *Reading* be committed, or not, by a Justice of the Peace. The Commission of *Oyer* and *Terminer* may be issued out, and direction may be given to the Attorney General to prosecute him, whether presently, or till the Lords be tryed; as he has broken Privilege of Parliament. He is in your custody, and the Serjeant may take care there be no tampering with him.

Mr *Vaughan*.] Commitment is no punishment, but security in order to future Tryal. If he was at large, the Commission, &c. may go out—The legal custody he is in may secure him, till the Commission be issued out.

Sir *Francis Winnington*.] As to the having him remain in your custody, if you will proceed by way of Impeachment, then it is proper to be in your hands. Let him be where he will, if he be safe kept, we have undeniable Witnesses to prove the fact upon him. It does not depend upon his examination, but we have Witnesses. Let it be Treason, or Misdemeanor, the Attorney General is so worthy, as not to bate him one tittle. Whether it be one way of Tryal, or another, it is for the service both of King and Kingdom to have it expeditious. Therefore I move, to have you address the King for a Commission of *Oyer* and *Terminer*, &c.

Resolved, That an humble Address be made to his Majesty, to desire his Majesty to give Order, that a special Commission of *Oyer* and *Terminer* may be forthwith issued out, for the trying of Mr *Nathaniel Reading*.

Monday, April 7.

Mr Secretary *Coventry* acquaints the House, That Mr *Reading* had sent a letter to Mr *Chiffinch*, who seemed squeamish to take it; wherein he desires "by his means to have access to the King, in order to inform his Majesty of matters that much concern his Majesty and the Kingdom." And that he was commanded by his Majesty to acquaint this House, that his Majesty refused to receive any information or application from any whom the House of Commons had cognizance of before, and had begun with.

Sir *Francis Winnington*.] I think it not amiss, to order *Reading* to come to your Bar, and to let him know, that you have notice he has something to say which concerns the King and Kingdom, &c. and it is highly probable, he may inform you the whole matter, and to acquaint him that he is not to think to be farther examined. Possibly he may tell you the whole truth.

Colonel *Titus*.] I think it not to any purpose for him to come to the Bar. He probably may say somewhat you would not have divulged. I would have the Letter from his wife to him, which the Serjeant intercepted, (which was to this effect: "Do not throw yourself away, and your poor children—Come to a resolution with yourself. All say you have not carried yourself like a man of reason. Make me not worth the ground I go upon, &c.") to be delivered to the close Committee, to make what use they think fit of it.

Mr *Powle*.] For my share of it, I cannot agree that Mr *Reading* be brought to the Bar. It may be, something he may say may cross your Evidence against the Lords, &c. and so gratify his design by it. Let him see his own danger, and that may probably disappoint his design.

The Articles of Impeachment against the five Lords were read.

Sir *Thomas Clarges*.] I am old enough to remember, that, when Lord *Strafford* was committed to the Black Rod, the Commons were dissatisfied, and the Lords resolved,

solved, "That till the Commons would send more particular Articles against him, they would not commit him to the *Tower*;" and the Commons thereupon did. I desire that some general time may be mentioned in the Impeachment from whence the date of these Treasons may be mentioned. The Act of Grace else may be pleaded by the Lords. *He was interrupted to the Order of the Day.*

[The Articles were sent up to the Lords by Lord *Russel*.]

Debate on the Report of the Reasons why the Commons cannot agree to the Lords Amendments [of Lord *Danby*'s Bill of Attainder.]

Mr *Garroway*.] By the Lords Amendments, it is but a semblance of Banishment of the Earl of *Danby*, and he shall not have it—It is an Act of Indemnity, and you are about to mend it. I would not make this Bill otherwise than it is entitled; and not compound for Treason.

Sir *Thomas Clarges*.] If possible, by any means I would preserve a good correspondence with the Lords. As for "the day of rendering himself, &c." you may make it longer; but if he be stripped of his honours and estate, and reduced to his first condition of Sir *Thomas Osborne*, you may have your ends.

Sir *Thomas Lee*.] You have said in the Bill, "If he does not appear, &c. by the 10th of *April*;" and the Lords say, "the 15th;" the consequence only is, that it gives him five days more to appear. But if it could be regular, I would offer it to be "*May-day*;" and if there should happen to be five or six days Debate, it would look like a retrospect Bill. I offer it only.

On the Lords Amendment, "If he be found in *England* after the 1st of *May*, 1679, he shall stand attainted, &c."

Mr *Sackeverell*.] This Amendment makes it a Bill of Banishment. Then whether is it more eligible to prevent *Danby*'s standing his charge, or to go away out of *England* with all he has got, and come no more? It can never be, but the bigger the penalty is, the more likely it will be to bring him in. If we are of opinion that he will stand his charge, or come in, we ought not to agree with the Lords.

Sir *Thomas Clarges*.] He forfeits his honours, &c. since

the 22d of *December* last. You strip him of all his estate and honours, and there will be little left to comfort him. I would agree with the Amendment.

Mr *Vaughan*.] The Amendment runs thus: "*Danby* shall appear by the 15th of *April*;" but he is at his liberty whether he will appear or not; so he may be in *England* till the first day of *May*, and have time to do all he has a mind to, &c. and carry away all he has got with him. And where are you mended in this, by rejection of the Lords Bill of Banishment?

Lord *Cavendish*.] If I could be of opinion of the Amendments of Banishment, &c. I would agree, &c. But this leaves the ancient methods of Parliament, giving up the Justice of *England*, as if you could not make good the charge. And so he may go away with the honours he has acquired, by the very crimes he is charged with. It is not for your honour, and I would not agree.

Mr *Powle*.] I am one of those who desire the Bill may pass, but not as it is amended. The case concerned in the Bill is, whether such crimes, as *Danby* stands charged with, shall go away with impunity? But here, in this Clause, something is mistaken. It seems to me to be very monstrous, that you give him time to the 15th of *April* for his appearance: Then come the Lords Amendments, If he come back, he shall stand attainted "from the 1st of *May*." Then, in that interval of time, he is under no manner of restraint (for I am of opinion he lies lurking about town,) and what then will hinder him in that space of time from coming into the King's presence, the House of Lords, or the Council-board? What he does now privately, he may, in that interval of time, do openly, and ship himself away with the spoils he has got—The penalties upon him are in the next ensuing Clause. I shall never agree that he shall go away with life and fortune. But if you have something equivalent, you have your end. This is my opinion, but I submit it to the House.

Mr *Garroway*.] This Clause is turning of the whole Bill. The time given him is a pretty time to do what he has to do, so is a licence for him to stay here all that time.

time. But say the Lords, "We may reach his estate." But the King may give it him again—There is no injustice in the case, in our Bill. If he will, he may come in in that time, and be tryed.

Sir Thomas Player reciting the proceedings against Lord Clarendon, said,] The letting him go unpunished was the occasion of all the misfortunes of the nation that followed. *To which answered*

Mr Hyde.] I cannot let those words pass without an answer. The case was quite otherwise than *Player* represents it. "Special and particular matter," in the Impeachment against Lord *Clarendon*, was insisted upon by the Lords. And I then offered, "That, if the Gentlemen that brought in the Articles would make good any one Article, he would confess them all *." But he went away to leave his country in peace, and that he should give no occasion of difference between the two Houses, and had sufficient punishment by the Act of Banishment.

Colonel Birch.] As to what fell from *Player*; I was one of those that gave no consent to that Lord's Impeachment, without inserting "special matter" in the Articles. But as to this case, I will not speak for *Danby* in this Amendment of the Lords; but you may possibly hold so hard upon your Bill, that he may have opportunity to escape. Such is our fortune, by the goodness of a Prince, that rather than have Ministers chastised, he would be chastised himself. Great familiarity has been with them by Princes, and they have been led by them. But it is our duty to throw our garment over them, rather than discover their nakedness. It may be the Treasurer will lay what you charge him with at the door of his Prince—and many know where he lay trinketing with the *French*—This will be ill done—but is this the most honourable way of dealing? Deprive *Danby* of his honour and estate; and if more be to come after him (as *Bennet* said) it may fright them.

Major Beake.] I wish that all crimes may have proportionable punishment. What is offered to you is,

* See Vol. I. p. 16. This offer is there made by Lord *Cornbury*.

whether *Danby* shall have such a punishment, &c.? If Banishment be a better punishment than the forfeiture of his estate and corruption of his blood—I apprehend that Banishment was no mean punishment among the *Romans* and *Grecians*. For divers ages after the Conquest, Confiscation of Estate and Banishment were the usual punishments. *Magna Charta* says, “*Nemo perdat patriam, &c.*” If you attain those ends you desire by Banishment, &c. a greater punishment will follow him, and that which he will never recover; the curse of *Englishmen* will go after him—He carries with him a wounded conscience; and that is part of the spoils he will take with him. His crimes are transcendent! They will dog him wherever he goes; the meanest person that he has oppressed may assault and attack him on the other side of the water. If we can but reach this, to lay him as low as the dust, can you promise to yourselves that the Lords will concur with what you aim at, or the King? I would take that course by which we may probably arrive at our end—And his honours and estate may be taken from him, before he had the Treasury.

Sir *Henry Capel*.] I am glad to see so great an Assembly, in a matter of so great moment, in so great a calmness. I shall ever take care to behave myself with moderation and temper, and will do it in this point, and keep the Government steady. As to what is said in reference to agreement to the Lords Amendments; in some measure, I agree. The steps of this Bill to the Lords have been very regular, very just, and we ought to stand by it. But the Lords, under favour, have not done the same. I know not by what measures the Lords have gone to amend this Bill. What reasons the Lords had, not to commit Lord *Danby*, &c. are yet unknown to me. Now this is come before you in this Parliament (though the Lords thought it irregular in the last.) The Black Rod is sent for *Danby*, and he is not to be found; and no more. You proceed with your Bill, and you ought to stand by your Articles, if you can, and put the least blemish upon them that you can, and you ought to take care not to be
the

the first persons that comply, &c. I suppose the Lords have good reason for what they have done; but yet it appears not to us, what induced them to these Amendments. Your Attainder reaches to *Danby's* honours and estate, &c. We shall, it may be, agree to all the Lords have offered, &c; but my Motion is, let us disagree with the Lords at present; and so if we go to Conference, the Lords may give us Reasons.

Sir *Thomas Meres*.] The Lords, at giving back this Bill at a Conference, with the Amendments, gave us no Reasons for them, but said, "They observed, that the great affairs of this Nation are at a stand, at a time of the greatest danger and difficulty that this Kingdom ever laboured under; that the King hath always in his reign inclined to mercy and clemency to his subjects; therefore, to a King so merciful and compassionate, the first interruption of his clemency, they did desire, should not proceed from the two Houses pressing the King to an Act of the greatest severity. Therefore have passed the Bill with some Amendments."

Reasons were ordered to be drawn up, for not agreeing to the Lords Amendments.

Tuesday, April 8.

Mr *Powle* reports the following Reasons why the Commons disagreed to the Lords Amendments, &c. viz. "The addition to the title doth shew, that the Amendments, made by your Lordships to the Bill, do wholly alter the nature of it; and from a Bill of Attainder, have converted it into a Bill of Banishment, which the Commons cannot consent to for these Reasons*:

"1. That Banishment is not the legal judgment in cases of High-Treason: And the Earl of *Danby*, being impeached by the Commons of High-Treason, and fled from justice, hath thereby confessed the charge, and therefore ought to have the judgment of High-Treason for his punishment.

"2. That Banishment being not the punishment the Law inflicts upon those crimes, the Earl of *Danby* might make use of this remission of his sentence, as an argument, that either the Commons were distrustful of their proofs against him, or else that the crimes are not in themselves of so high a nature as Treason.

* A stroke is made across these Reasons, in the MS. Journal, as if it was intended they should be struck out.

"3. That

“3. That the example of this would be an encouragement to all persons that should be hereafter impeached by the Commons, to withdraw themselves from Justice (which they would always be ready to do, if not prevented by a commitment upon their Impeachment;) and thereby hope to obtain a more favourable sentence in a legislative way, than your Lordships would be obliged to pass upon them in your judicial capacity.

“The Amendments being all in order to these alterations, the Commons do not agree to them for the former Reasons.”

Mr *Sacheverell* reports, from the Secret Committee, That Mr *Reading* has licence now from the King to speak his mind. He made many alleviations and palliations to his attempt of invalidating the testimony against the Lords, &c. of those he endeavoured to corrupt, and trifled with the Committee.

Mr *Seymour*.] I was surprized to see *Reading* brought in that manner to the Committee, in irons. It is the first time that ever a prisoner of the House of Commons was so brought. I move, that he may be carried to a Justice of Peace, that he may be done with as the Law orders and directs.

It was ordered accordingly.

[In a Grand Committee] on the Act against the Importation of *Irish* Cattle.

Serjeant *Maynard*.] An Act to prohibit *Irish* Cattle is unjust to our fellow subjects, and an impolitic Act. In story we find what a great deal of blood and pains have been spent to bring that Kingdom into order. If this Bill pass, they will have no dependence upon *England*, if they have no trading. If they fall from us, it cuts them off from all commerce of trade. Some few Lords have their rent only brought into *England*. What will they care? They will in a short time be better than we. They have trade already with *France*, and if you put them to manufacture their own wool, they will carry that trade from you. We bought Cattle lean from *Wales*, and fat, and they could sell them for no more, than when *Irish* Cattle came in. Pardon me, if I speak plainer. I was once for making *Irish* Cattle a nuisance. See how it goes upon Prerogative; where it is a nuisance the King cannot pardon what is past, nor henceforward give a toleration for doing it. A private nuisance the King cannot pardon,
nor

nor hinder a man's taking his remedy. It is a nuisance to a private person, because it does him wrong. Properly a nuisance is where a thing is *malum in se*; *malum injuriosum*. The King may not pardon the thing when it is done, nor dispense with the doing it. What is the nuisance of *Irish Cattle*? *Commune nocumentum populi*. By neighbours and inhabitants only, is not good in Law; it must be common; and one half of us are not of opinion that these Cattle coming in do hurt us—One gets not so much as the other for their land. If I were upon my Oath, I think the King may pardon it, though made a nuisance, it being *malum prohibitum* only, and these the King may dispense with, though not with *malum in se*. I would not put *Ireland* into a condition to make them as considerable as ourselves.

Sir *Edward Harley*.] The Gentleman has told you, "That this Bill is unjust, uncharitable, and impolitic." It is far from being "unjust;" if so, it is unjust to prohibit *French* goods, or of any foreign Nation. It is a strange rule of Justice for another Nation to impose commodities upon us that we have no need of, to destroy our own growth; that's strangely impolitic. As for the "uncharitableness" thereof, it is a rule, that "Charity begins at home." It is strange that out of our kindness to *Ireland*, we should be unkind to the imperial territory and seat of the Government. It has cost *England* great sums to rescue *Ireland*. And as to the "impolitic part, &c." *Ireland* is but a Colony of *England*; now can any story give an account that Colonies have been so indulged, as to prejudice the territory from whence they came? If the meat you eat must come from them, that is not politic to be at their mercy. If it be such a prejudice to the populous trading part of *England*, that they cannot subsist without the prohibition, &c. and must lay down their breeding ground, then it is a common nuisance.

Mr *Trenchard*.] It is unjust that the King's subjects should not have the benefit of them. It is not just to inhibit, from any State that we are at peace with, the course of trading.

A Confe-

A Conference was desired by the Lords, (*see at large in the Journal,*) wherein the Lords insisted so far upon their Amendments as to exclude all Attainders of the Earl of *Danby*.

Mr Garroway.] I observe that the Lords, by tricking you, instead of a parliamentary way to answer your Reasons, have slipped them over. I will speak my mind plain. *Danby* has been my friend, but I am more for your honour. The Lords have formerly entered things into their Books, but found little benefit by them. I hope at last *Danby* will come in, and all this is but to drive a better bargain for him. I move, that you would adjourn.

The Debate was adjourned till to-morrow.

Wednesday, April 9.

[On the Report from the Conference.]

Mr Sacheverell.] The Lords have desired a Conference upon the matter of the Bill of Attainder of the Earl of *Danby*, &c. They agree that your Reasons are strong and valid against their Amendments, but pray you to wave all methods of Parliament, and destroy all methods of proceeding, &c. I am in a doubt, whether you will not be caught in a free Conference to argue the subject-matter of the Bill. I would only show the Lords, that their Paper, now offered, is destructive, and contrary to methods of Parliament, and draw up your Reasons for it, &c.

Sir Thomas Lee.] I speak to point of Order. The Lords went yesterday in an irregular method in the Conference; for you agreed to confer with them upon the subject-matter of the last Conference, and when the Lords came to debate, they did not fall upon the subject-matter, &c. But you cannot have a free Conference from the Lords, when they will say nothing of your Reasons, and by not drawing it into Conference, they do in effect allow your Reasons. I speak only to forms. I reserve myself for the Debate.

Sir William Coventry.] I speak to method of proceeding. If you go to a Question, you must read the Lords Amendments; to some of which you have agreed, to others not. Now the Lords send you down Reasons why
you

you should agree to their Amendments. Every time you put the Question for the Conference, they must be read; for it may so happen, that Members were not here, when they were read before, and so cannot give their judgments to the Question.

Sir *Joseph Williamson.*] I take it, you cannot read them again. The Lords agree, in the last Paper, with such and such circumstances. As to the first point, they do not agree, as to the cutting off all his honours and lands, &c. But they agree so as that your Question is not upon the first point, but the last.

Sir *Thomas Lee.*] Suppose, upon this Conference, some alterations are fit to be made, how can that be done without reading them? The matter betwixt you is the Attainder.

Sir *Harbottle Grimstone.*] This Paper from the Lords, is not an answer to your Reasons, but to accommodate and arbitrate the thing. In effect, if you will take 10s. in the pound, you may. They say, "Let us banish him," and you would attain him. They would have you depart from your Reasons, and accept of their expedients.

Sir *Francis Winnington.*] I take it, as the matter stands, to be no more than this: We send a Bill to the Lords, and they make Amendments to it, and you disagree to those Amendments, and send the Lords your Reasons for it. Barely they insist upon their Amendments, so far as to exclude all Attainder. They tell you, "They do not come to argue, but to mitigate and reconcile." They have not yielded to any particulars of your Amendments. They agree so far as to exclude all Attainders; and that is the same thing as to disagree; and they insist upon all their Amendments.

Mr *Vaughan.*] You have offered the Lords your Reasons, &c. and they answer them not, but say they will not argue your Reasons, but insist upon their own Amendments. When that is done, there is an end of all intercourse in that matter, and that is a way of reasoning in the streets. We ought to proceed then no farther, but adhere to our own Reasons.

Sir

Sir *John Trevor*.] The Lords have got a word, a fine one, "insist." It was never known in Parliament, but in the last Parliament. You send them up a Bill of Attainder, and they send you down Amendments by Amendments, and you deliver your Reasons against them. The Lords should, in this case, desire a free Conference, and give no Reasons, but "insist, &c." You sent the Lords a Bill for disbanding the Army, and to place the Money in the Chamber of *London*. They amended it, and would have it in the Exchequer. The Commons would not agree to it, and at that Conference they told you, they did insist upon it; whereas they should have had a free Conference, &c. If you do not now demand a free Conference, and put their Amendments to the Question, you are out of the course of Parliament.

Mr *Seymour*.] I rise up to speak to method of proceeding. You are moved to desire a Conference with the Lords, to show the Lords the errors of their proceedings. They who do it, would do well to assign those errors. The Lords were at liberty to say what they would, and you thought fit not to agree with their Amendments, and you presented them your Reasons at the Conference, why you could not agree, &c. The Lords have given you Reasons, why they insist upon their Amendments, though not logically, for not agreeing strictly. You ought to put the Amendments to the Question, point by point. You are to agree to the Amendments with the coherence. The Lords cannot mend their own Amendments, but you may yours; and you may put that Question after that Question of adhesion. Then you stick to your Bill.

Sir *Joseph Williamson*.] I did think this last Paper delivered at the Conference, not to be the same as their first; they come nearer to you, than in their first. You are reading the Amendment of changing the Attainder, if he came not into *England* by such a day, into Banishment; it is a penalty, upon that condition only. Thus far then the Lords come; they say, "they shall insist on their Amendments no farther than to exclude Attainder and forfeiture of all his honours and grants, &c.
from

from such a day, &c.” They agree, then, if you will bate them the Attainder, they will insist upon no farther point; so they are in a disposition to deprive this Lord, if he appear not by a day, of his honours and grants, &c. from such a day. I have spoken my mind. This being the case, I wish this Lord Justice beyond that, and it is pretty well known, I have no obligation to him; I would condescend to the public convenience—There is more cause than this for agreement between the two Houses. When you come to apply to them judicially, and they turn themselves to the legislative course; this is the place for that consideration. If Justice can be reasonably satisfied by this compliance of the Lords to deprive *Danby* of honours, &c. this being the case, how advisable is it for you to insist upon the Attainder, &c. with the consequences, which turns him and his family to the lowest condition, without remedy but by Act of Parliament! You have all the reality of the penalty if he stands out; you have all your end but that of the Attainder.

The Amendments were disagreed to.

Serjeant *Ellis*.] Lord *Danby* at first was not committed, and those who manage the Conference must lay that as the first foundation, that all this ill consequence is come from the not committing him, and lay some weight upon that at the opening of the Conference.

Sir *Henry Capel*.] If omitting securing Lord *Danby*, &c. be not enforced at the Conference, it will open a door for all great men to escape Justice; the not committing, &c. upon the Commons accusation. If the Commons cannot reach men in their regular way of proceedings, there is an end of all Parliaments. The five Lords were committed by the Lord Chief Justice for the Plot, and the Parliament in being. I move, therefore, that the Managers at the Conference may have some such instructions.

Sir *Thomas Lee*.] I think that the Committee is pretty well empowered already, and you have reason for it; for in your parenthesis in the last Reasons, you touched that matter sufficiently; so that there is a foundation laid for this Debate already. The Lords say, “ That whatsoever
has

has been done in *Danby's* case, to remove all jealousies of the precedents of this kind, shall not be drawn into example for the time to come." And the Lords said, "They would not commit him, &c." I know not to which to apply; what is moved should be insisted upon, whether one or all. In the case of Lord *Clarendon*, so often cited, &c. there was only special matter insisted upon by the Lords, &c. before they would commit him; and then they asked the opinion of the Judges, as now in this case they have done. Now the question is, whether you will not cozen yourselves in it, &c. if you insist upon this Bill (and no man is the better for *Danby's* going away) then you will have a good precedent for running away; but if you lay the weight upon the matter of securing *Danby*, that is in the judicial proceedings; and so you may put the Lords upon starting aside from the matter in question. Therefore I would not insist upon that, but touch it only.

Sir *William Coventry*.] The Lords may retract, if you insist upon that point of their not securing *Danby*. An error they committed the last Parliament is not a proper subject-matter for this Conference, and they may say, "Your Managers have transgressed their bounds, for the Conference was asked upon the Amendments of the Bill, &c."

Mr *Sackeverell*.] The Lords have made you an offer which seems very kind, but is no way beneficial to your end, &c. They say, "What they have done in this Lord's case, &c. shall not be a precedent for the time to come." I am afraid the Lords foresee that your Articles have laid a foundation for the Commons to defend themselves, and so that shall not be a precedent. Possibly subversion of the Government is not by any positive Law High-Treason, reserved to judgment of Parliament by 25 *Edw. III.* Consider if you do not in a great measure deprive yourselves of that right, that the Lords have made a resolution in, "That Impeachment, and Writs of Error, &c. shall remain still, though the Parliament be prorogued or dissolved, &c." The Commons still have their right, and if you agree to this point, you may part with that, a much greater point.

Mr

Mr *Hampden*.] I have stood still to hear the prudential part of this matter only. The Question is, Whether you will meddle at all with the Lords omission of not securing *Danby*, &c. I would touch it the most you can do. In the preservation of your rights, you may go farther than touch it lightly; you must stand to it, and defend it; if you touch it lightly, you will rather lose than gain by it. Suppose any of the Lords (for they are touchy, and nice, and well versed in their methods) should reply upon it, and bring it in debate, should your Managers yield it, or argue it? I would rather let it alone at this time.

A Motion was made, That, on account of the general apprehension that *Tangier* was to be sold to the *French*, a Vote might pass, that those who shall advise the King to sell *Tangier*, shall be accounted enemies to the King and Kingdom.

Mr *Seymour*.] It is not fit for the House to receive any Motion that carries reflection on the Government. Search your Books, and you will not find one Vote like this; and this upon a suggestion only of bare hearsay. Things not fit to be moved are not fit to be proceeded in. If it be insisted upon, &c. you can find no such Vote upon your Books, &c. This not being annexed to the Crown of *England* by Law, you cannot vote him an enemy to the King and Kingdom, that advises the sale of it. There appears nothing of intention of the sale of it; and those are the fittest to judge of it, who have the only right to the sale. I think *Tangier* of such importance, that it will be the last thing in the world the King will part with, as knowing the consequence it is of for trade; and it is never to be suspected that the King will go any where for Money, but to his Parliament. As to bringing in a Bill to appropriate *Tangier* to the Crown of *England*, that may be done; but if you subject it to the Law of *England*, many things in the Government of *Tangier* are not applicable to the Law of *England*. Since all Gentlemen are persuaded in their opinion, that as to trade, we cannot be without it, I hope Gentlemen will take care to support it by some Clause in the Bill for appropriating it, &c.

Colonel *Titus*.] I desire that Gentleman to remember, that on raising the Customs in the case of Alderman *Chambers*, 3 *Char.* they that did it, were voted enemies to the King and Kingdom. Though Mr *Finch* said "it was in the worst of times," it was the 3 *Char.* the best of times.

Mr Solicitor *Finch*.] My argument was this: That which you design, is to prevent the sale of *Tangier*, whether by a Law, or Address to the King, &c. Your Vote cannot make it a Law. Next, that you deliver your opinion some way to save *Tangier*. But your Vote is no matter of record. It is for yourselves alone, upon your Books; and if you are of opinion that the keeping it is of absolute necessity, the way to make use of that, is to represent to the King the danger of parting with it, and then you are in the right.

Lord *Cavendish*.] *Seymour* said, "There was no precedent of such a Vote, to cast an aspersion upon the Government upon a bare suggestion." But if the thing be not prevented by bare suggestion, we shall never do it. These things and designs are works of darkness, and not to be discerned till they are done.

Col. *Birch*.] I hear it said, "that, if you resolve *Tangier* to be of such use to the Kingdom, then you should take the charge and care of it upon you." I must say, that *Tangier* was estimated, and *Dunkirk* too, into the charge of the 1,200,000*l.* Revenue for the King, upon the calculation of particulars. I would therefore vote as is moved, because *Dunkirk* was sold to the *French*, and a Bill was sent up to annex it to the Crown of *England*. As for the indecency of passing such a Vote, I have not had those advantages of education that other Gentlemen have, but I am sure there is safety in the Vote. How we shall keep it, is not the Question. It is said, "that the Government of *Tangier* cannot be applied to *English* Laws." But how was *Calais* governed, when in *English* hands? We shall find Laws to govern it, when once we are sure of it.

Sir *William Pulteney*.] It was judged a crime to sell *Aquitain* and *Mayne*, and it is reasonable to make the advice of selling *Tangier* so.

Sir

Sir *Joseph Williamson*.] I desire to give my opinion, and reasons for it, in what is moved. The importance of *Tangier* is too well known, and I take it to be highly criminal to advise the selling of it. It is not a plain open country, but a Port. A Counsellor that advises selling this, as a Port, is highly criminal. I will not therefore easily suspect any such. Then, as to the prudential part, men of experience in commerce and navigation will tell you, that, however imperfect things are left there, yet it is of that importance and concernment in relation to *Algiers*, that hardly a buyer of it in *Europe*, but will be suspicious to us as an enemy. I am against the selling, and as much detest the thoughts of it, as any man; but you have no ground for your apprehensions that it is about to be sold, but a report at large. Grave Assemblies go not about to frame advice upon bare reports and possibilities of what, peradventure, may be only, without farther reasons for their apprehension. Supposing there were such a fear, yet you have a remedy to-morrow morning, by bringing in a Bill to annex it to the Crown, &c. Enough has been said of that, and things having been mentioned here, it is intimation enough of the danger of those persons who shall advise the sale of it. The Bill is reverential, and observant to the King. I would advise that, and lay aside the Vote.

Mr *Hampden*.] The manner of opposition to this Vote, moved for, is that which calls me up. It is said, "That those things are not fit to be moved, that are not fit to be proceeded in." But I think, that only such things as are never fit to be moved, are never fit to be proceeded in. If the thing be so highly criminal to advise it, and necessary to the Nation, and your duty to prevent it, then let your mind be known before-hand, that your justice may light the heavier upon them that shall attempt to advise the sale of it. *Chambers's* case mentioned, in which there was such a Vote as is now moved for, was in good times, or at least called so; and that Vote, "That whosoever shall lay any Tax, or Tallage, &c. upon the people, without consent of Parliament, are enemies to the King and Kingdom."

Sir *Henry Capel.*] It is objected, "that this is a summary Vote." But whilst the Bill is passing to annex *Tangier*, &c. we must declare as is moved, for we know not what stop this Bill may have, that is of so much consequence. Therefore I would make such a Vote.

Sir *William Hickman.*] A Gentleman said (*Seymour*) "That it is not to be expected that the King will go to any body for Money but the Parliament." But when I consider that, the last year, application was made to the *French* King for six millions of livres, mentioned in the Treasurer's Letter to Mr *Montagu* †, without Parliament, and the Parliament then sitting, we may suppose this may be done. Therefore I move as before.

Mr *Love.*] I am apt to believe, that the intention of selling *Tangier* is not so, because that Honourable Person (*Seymour*) who is near the King, says so, but it is talked familiarly. If the *French* have that, they will have as good an advantage as they that have the *Sound*. If *Tangier* were under water, I should be glad of it; but seeing we have it, it is not a time to say, that it is no matter if it were gone. If it were in the hands of the *Dutch*, or the *Spanish* galleys, your trade is gone. You have been told, "it may be parted with if besieged, and cannot be kept." It may be worth millions to the *French*; they may then put what impositions upon our trade they please.

Mr *Hampden*, jun.*] Whoever advises the selling of *Tangier*, has not the Nation at his heart; and whoever has advised all the ill we have gone under, may procure

† See Vol. VI. p. 348.

* Grandson of him who had pleaded the cause of *England* in the point of Ship-money, with King *Charles I.* His father was a very eminent man, and zealous in the Exclusion. He was a young man of great parts, and one of the learnedest gentlemen I have ever known, for he was a critic both in *Latin*, *Greek*, and *Hebrew*. He was a man of great heat and vivacity, but too unequal in his tem-

per. *Burnet.*

He was tryed at the Court of *King's Bench* in 1683, for a Conspiracy to disturb the Peace of the Realm, and fined 40,000*l.* the most extravagant fine that had been ever set for a Misdemeanor in that Court. He was afterwards, on King *James's* accession, tryed for High Treason at the *Old Bailey*, for the same offence, and condemned, but his life was saved. He afterwards cut his own throat.

persons to advise the sale of *Tangier*. Therefore I move as before.

Sir *Francis Winnington*.] The Gentlemen that move against the Vote, call it "highly criminal to advise the King to sell *Tangier*." All conclude it of great consequence to the Nation. Either the King is advised to sell it, or not: If nobody has advised it, the Vote touches nobody; if there be any such—had there been such a Vote, *Dunkirk* had not been sold; and we may reasonably believe it, when Statesmen put the King upon such necessities as of late they have done. You were formerly told, "that *Dunkirk* was a charge to the King, and therefore sold;" but I had rather give a charge out of my estate, than I would have aggrandized the *French* King. It is said, "That this advice to the King of selling *Tangier* is not on foot." But that which is *vox populi*, common fame, is an instruction to us to give counsel. But when there is opposition to the debating it, it looks as if there was something in it. If the thing be done, it is no hurt to us; and when I hear so many wise men say, "That they who advise it are enemies to the King and Kingdom," pray put the Question for the Vote.

Resolved, Nemine contradicente, That those who shall advise his Majesty to part with *Tangier* to any foreign Prince or State, or be instrumental therein, ought to be accounted enemies to the King and Kingdom.

A Bill was ordered in to annex it to the Crown of *England* *.

Thursday, April, 10.

[On the Act against the Importation of] *Irish* Cattle.

Mr *Boscawen*.] Those Gentlemen that are for bringing in *Irish* Cattle, are not disposed to the interest of their country. This is to put out one of their eyes, to put out both of their neighbour's. It is said, "That it is unjust to take trade from *Ireland*, and freedom of trade." *London* is the great seat of the trade of *England*; it is four parts in five of the whole Nation. If they have so much greater advantage of the trade of *Ireland*, and the parts about it, &c. it is just that the country should have some

* This is not mentioned in the Journal.

share of trade too. Exception is taken, that we look upon the *Irish* as foreigners, &c. Foreign bought, and foreign sold, &c. *Essex* calves are sold double the price of *Welch* and *Western* runts. As for saying the keeping *Irish* Cattle out, has spoiled trade; the remote parts from *London* are spoiled in trade, which ought to be considered, who have now little wool and yet the price is fallen, and in some countries not half the sheep they had, and that is an argument that we want no Cattle, and that we have stock enough. If Cattle come out of *Ireland*, *English* Cattle will be sold cheaper, and that takes away the profit of the stock, and then the land will be turned into more corn—What is got by them, is part for themselves, and the whole for *Ireland*.

Mr *Papillon*.] I hear it said by some, “That *Ireland* is a foreign Kingdom.” Now whether it be such a Kingdom as may stand in competition with *England* as foreign? I do not look upon *Ireland* as foreign.

Sir *William Coventry*.] I shall not trouble you with any discourse of trade; but in short the Question is, amongst ourselves, upon which our Resolutions turn, viz. What is good for us, and what is bad? Gentlemen are to consider the general and universal good, which must take place of the more particular good. This lies between the breeding and feeding ground. It is said, “That *English* Cattle are cheaper now than they have been for ten years.” But I fear, there is another reason for that; it is the uncertainty we stand upon for our peace and quiet. My neighbours in the country told me, that the market fell upon the news of the Prorogation, and rose again when we sat. The matter of Popery, and the fears of *France*, there is not the poorest man but considers that. He knows not how soon he may have soldiers take away what he has, and he will not lay out his money in stock. But this is a reason that I hope is not durable. I hope this Parliament will secure the people’s fears. Now for the breeding and feeding lands, let Gentlemen apply their thoughts; there is an obligation upon us to consider the major part of either in the value of the Nation; for that defends us, and pays Taxes, &c. and ought to be supported. If there be a
thousand

thousand acres of rich land to three hundred of breeding land, is it prudence to improve the three hundred as much as you lose in the thousand? If the feeding land be richer in the lump, and defends the Nation, that ought to be taken care of in the first place. As to the common people, there is no comparison, who receives advantage or disadvantage by it. It is plain, if *Irish* Cattle be kept out, it makes flesh dearer, and then comes in that consideration, that all who depend upon manufactures and navigation will have it cheaper, and not dearer.

The Debate was interrupted by a free Conference, which *Sir Thomas Lee* reported; That the Managers had, as well as they could, supported the Reasons, &c. you formerly sent the Lords, &c. The Lords had better explained themselves thus; "That being in another Parliament, they hoped the Commons would not take offence that they have reversed a Resolution of the former Parliament. They have sent an Order to take the Earl of *Danby* into the custody of the Black Rod."

Mr Garroway.] I hoped you would have had something worth your hearing from the Lords; but seeing it is not—Put it into your Books, to show posterity you have gained the point.

Mr Powle.] The Lords seem to retract their error, &c. and that the not securing the Earl of *Danby*, &c. shall not be upon their Books for the future. I would have some Members search the Lords Books, to see if it be so entered.

Sir Francis Winnington.] The Lords have yielded the point generally, That after Impeachment, &c. by the Commons, the person impeached, &c. is to be secured.

Sir William Coventry.] I would not have your entry into your Books refer to the Lords entry, till you see what is entered there.

Sir Robert Peyton presented a Petition from *Dr John Nelson*, Doctor of Law and Divinity, which sets forth, "That he did not publish the Book of "Letters, &c. from a *Jesuit* at *Paris*" (See the Print;) but that the Earl of *Danby*, having got a copy of it, caused *Hills* the Printer to print it."

Sir Thomas Exon, Doctor of Laws.] By other books this Doctor has writ, he has showed himself loyal; and it was quite contrary to his intention that this pamphlet

should ever be printed. He humbly supplicates your compassion for what he has done.

Mr *Garroway*.] I am against reading this Petition; you had good reason for the commitment of this Doctor, and he has not yet been at the Bar; and for what books *Exon* speaks of, that he has wrote, they are against the Church of *England*, and we may find good occasion to question him for them. I am against reading his Petition till he has been at the Bar to acknowledge his fault, and asked the Pardon of the House.

Sir *Nathaniel Herne*.] He pretends this book written for information, &c. but it is against the Doctrine of the Church of *England*, and there are such desperate hints in it, that it is fit he should answer it at the Bar.

Mr *Montagu*.] I am against discharging him till Lord *Danby* be tried. One of the Articles against *Danby* is, "That he is a favourer of Popery," and so against the Church of *England*; and this man, by his encouragement, has written this Book.

Sir *Joseph Tredenham*.] I see not how this man's case can relate to the Earl of *Danby*. I move that it may come to hearing.

Colonel *Titus*.] I know not the man's merit, or poverty (as has been alleged;) but I hear it said, that he has 700*l.* a year in preferments, and I believe his merit is as much as his poverty. It is said that he is a Protestant; but he has written a Book in the name of a *Jesuit*. I like not such Protestants. It is said abroad, that there are Protestant hands in the Plot; and will not the world believe it, from such a Book, &c.? He would make the world believe that it is the *Jesuits* advice to fall upon the Ministers. *Danby* gave order for printing this Book, and I believe for the writing it too. It may be, if you send for him, he may say something to give you farther light into the matter. You ought not to condemn him unheard, therefore I would read the Petition.

The Petition was read.

Sir *Thomas Clarges*.] His Petition is a kind of justification of what he has done. He says, "he wrote only what might

might be said as to affairs." As if the meeting of this Parliament was to be managed by the conduct of the *Jesuits*. Two or three years since, a Book was written, called "The Countermine;" when the Parliament was in a good humour against *France*: At that time, a Book came out to parallel those Counsels to the Proceedings in 1641. If this man was the author of it, it was a desperate and seditious thing. In his Petition he lays something to the Printer's charge. I would have a Committee to examine the matter and the Printer.

Sir *Robert Howard*.] This man had very ill luck, to send a Paper to the Printer, which, he says, he wrote for his diversion only, to be kept secret. I would have it examined at a Committee.

[The Petition was referred to a Committee.]

[A Bill was ordered in to continue the several Acts against importing *Irish* Cattle, &c.]

Sir *Francis Winnington* reported the free Conference with the Lords, which see at large in the Journal.

[*April 11*. Dr *Jane* and Mr *Sharp* preached before the House.]

Saturday, April 12.

Debate on the above Report.

Sir *Thomas Meres*.] I was at the Conference, and I observed that the Lords who managed it, did not open the Bill nor the Amendments, and so I would do by them. Their reasons were opened only in a general discourse, and not by particulars.

The Commons adhered to the words of the Bill.

Colonel *Birch*.] Now you resolve to adhere. I therefore desire that, when the Bill is carried up to the Lords, they may know that the alteration of the times, &c. is agreed to. And then there can be no incoherence nor disunion in the Bill.

Sir *Thomas Lee*.] I move to send to the Lords for a free Conference, to convince them, that the Bill is very well as it is, if you agree not to the Amendments; and if the Lords should fully agree, &c. then you may send for a Conference barely for amending "the 15th of *April*, &c."

Colonel *Birch*.] After you have voted to adhere, you never give Reasons why, and I submit it to *Lee's* second thoughts.

thoughts. But you may desire the Lords to make the day consistent with the coherence of the Bill.

Mr *Powle*.] Your answer must be to the Expedient. For they say, "Your Reasons are unanswerable." But the reason they would have you conjecture, you may pass over, and tell them, you rely upon your Bill.

Sir *Thomas Lee*.] When you carry up the Bill, you never bring it back. The use of free Conferences is to convince them that are to put the next Question, and there is no more to be put.

Sir *Robert Carr*.] There are several precedents of altering the day, as is moved, the full matter being agreed. In the last Parliament, it was done in the case of the Tax, and in Sir *John Coventry's* Bill. See the *Journal*.

Resolved, That it be a standing Order of the House, that, upon any vacancy of the Chair, no Motion be made for chusing a new Speaker, till after eleven o'clock.

Monday, April 14.

Sir *Thomas Stringer*, Serjeant, acquainted the House, that the five Lords in the *Tower*, upon their desire, have obtained an Order, that they should have Copies of the Records and Examinations in the Lords Journal, being the King's Evidence.

Mr *Powle*.] I would consider, whether persons impeached cannot have a Copy of what is matter of Record. It seems strange, that the Lords should enter Evidence into their Journal. I would have a Committee to examine where the error is, and how it comes to be entered, for the matter is but what may be had in every Bookseller's shop.

Sir *Thomas Lee*.] It is strange that the Lords, being a Court of Judicature, should enter all the Evidence; and for the Lords in the *Tower* to have liberty to transcribe all, is a thing of a strange nature.

Sir *Henry Capel*.] The Commons being accusers, I wonder the Lords should have Copies of the Informations against them. It is against the nature of all Courts of Judicature, to have Copies of Informations delivered to persons accused.

Sir *Francis Winnington*.] It will not be denied, I am certain, that such an Order is entered, &c. The Plot is concerning

concerning the whole Government. The Lords, in their legislative capacity, may enter into their Journal what relates to it, for general information, and the good of the Government. But what is entered, as examinations, they cannot have Copies of, for they cannot so much as have a Copy of the Indictment in any Court of Law. The Lords in the *Tower* desire this, to avoid circumstances of time and place. But take this as done either way, in a legislative, or judicial way, it is very irregular.

Mr *Coventry*.] If this should be, it would be a means to induce perjury, or subornation of Witnesses.

Sir *John Trevor*.] Information being given of this to the secret Committee, Mr *Clare*, their Attorney, was employed to search the truth of it, and till he makes his return, you have no assurance of the thing.

Ordered, That the Committee do forthwith withdraw, and examine what answer the Lords made to the desire of the Lords prisoners, &c.

On the Militia.

Sir *Gilbert Gerrard* moved, to take the Militia into consideration; to make it more useful for the safety of the Nation, &c.

Sir *William Coventry*.] The posture we lie in, is very deplorable and dangerous. The *French* King, by his influence, is Master of all *Chriftendom*, and it is the fate of this Nation to be defended with few alliances, or none at all that I know of. Where this storm will fall, it concerns every man to provide for himself; the *French* King having made Peace with *Spain* and *Holland*; and those who are not parties in it, have little to defend themselves. What will the *French* King do with his men? If he disband none, and he consent to lie under this vast expence, it is not for nothing. The wisest thing for the *French* King to do, is to employ them where they will raise him fewest enemies. And where can he have the fewest but upon us? Do you think that *Germany* and *Italy* will concern themselves in our quarrel? They will be glad he is employed in another place. Considering the spirit of the *French* King, all set upon glory; and nothing will fill his sails with more glory, and catch him with that point, like the
accession

accession of such a spot of ground as this to the Catholic Religion. The more the Papists are suppressed here, the more it will egg them on to get the *French* King's interposition. The storm probably will be here, but when it will fall, I know not. Another thing is likely to invite the *French* to fall upon us, *viz.* our want of preparation, &c. (and that may make an enemy of a thing of a worse nomination.) *Holland* is only likely to assist us, but their jealousies are great among themselves, and the *French* King's great power and influence over them is able to make such an influence, as to retard them, if not wholly frustrate any assistance from thence. In the last Parliament, a War with *France* was the desire of the whole Nation, and I hope the courage of the Nation is the same still. The Militia of *England* is 140 or 160,000 men, and if disciplined, the *French* would not attempt them; and a reasonable Fleet may be set out, not to weary you with the charge, before there be occasion to make use of it. The Papists will not be wanting to expose all the weakness of the Nation they can, &c. Therefore I move, "That a short day may be appointed, to take into consideration the defence of the Nation."

Mr *Powle*.] I was ever one of those that did not apprehend an immediate invasion from the *French*, but yet would not leave ourselves exposed for want of defence. I like the Motion well, but I would have it go farther. If we should trust to the land defence only, I should be sorry. Our defence is principally the Navy, that the *French* may not come at us, but, as I am informed, the Navy is in a very deplorable condition. Pray think of that in the first place.

Mr Secretary *Coventry*.] People may think, and suppose a neglect; but the *French* ports have been viewed, and the condition of the *French* King at sea is such, that unless you speedily make preparation—He has ships in *Brest*, and all things ready to put out to sea; we have four ready, and perhaps he has ten. Now he has made his peace with *Germany* and *Flanders*, and his troops are going from quarter to quarter, it gives us an alarm. I
second

second *Powle's* Motion, "That the fleet may be in readines to keep the *French* at a distance." If *Ireland*, *Jersey*, and *Guernsey* are not provided for, he may surprize you. You know not which way he goes, nor where his interest lies to make attempt, which cannot be defended without a fleet. There are want of fortifications too; I am loth to tell you where; therefore let there be a day to consider, &c.

Mr *Sacheverell*.] I wish Gentlemen would a little more debate this matter, before they come to a resolution, for the satisfaction of Gentlemen that are of no better judgments than I am. It seems strange to me (and all know it) that it has been the business of *England* for some years to greaten *France*—We had but one man to get rid of, and no talk of any body else. Though we gave Money to be rid of our fears of *France*, yet I find that, as long as we give Money, the fears of *France* will be suggested. I would have Gentlemen consider, that we have charged the Nation to what it will bear, and we shall be walked to death. In the last Parliament we were told that all things were ready in the Navy, and it seems strange to me they should be so soon rotten. The Customs pay for fifty men of war, and where are they? The Navy is to come home from the *Turkish* country, where we made War with *Algiers*, for Passes, &c. to bring our Merchants to subjection. Are you going to support that Navy that sets all merchandize at will? Will *Holland* stand neutral betwixt *France* and us? It may be a while; you have not used them well; but will they come in at all? The War has all this while been but dropping shillings. If you have *Holland* against you, you are not a match for *France*. Will you bring the War from your teas?—Clearly, when there shall be such about the King, as will do their parts, there is no danger of *France*, &c. Now it is the middle of *April*, and if the *French* come out, can we have a Navy ready to fight them this summer? And if the Navy be in so good order, as was represented the last Parliament, it is well. It must still be the same men that managed before, that manage things still; clear the decks of them—But to give Money, to be thrown
thus

thus away, and now to be told, “That the Navy is out of order”—I will never give Money. Ships out of the *Dutch* War are brought you to repair. Will you put your Money into the same mens hands that have supported the *French* King? It is worth the consideration of this House.

Sir *John Lowther*.] I find that something is still re-criminated to hinder the consideration of our defence and safety. It is not the interest of Gentlemen now to put a difference betwixt the King and his people. We have sat all this while, and done nothing but the proceedings against the Earl of *Danby*. Must not we think of our safety because there are faults? And must we still infer, that Money is to be given? To say, because there are not Alliances made with *Holland*, shall we lay aside all such considerations? Pray let not this Motion of the Militia be stifled.

Sir *Gilbert Gerrard*.] When I made the Motion, &c. I as little thought of giving Money as *Sackeverell*, or any man that moved it. But I would ask, if the *French* come with their fleet upon our channel with 14,000 men, may they not burn all our fleet? Our channel lies open, and upon that account only I moved to consider the present State of the Nation.

Mr *Garroway*.] Any man here may consider the danger we are in; and who brought us into this danger? Must we not consider the hands that brought us into all this misery? Must not Gentlemen tell you, that Money was given for ships, and Money given for stores, upon your books? If your Money be diverted from the uses it was given for, and a War made with *Algiers*, for getting Money for Passes, &c. till you clear your hands of the ill management of affairs, you will do no good. Nothing can hinder the *French* from landing to-morrow—But the *French* desire to conquer us among ourselves, as is plain in *Coleman's* Letters. “Purge yourselves (as Lord *Sandwich* said) from the *French* at *Whitehall*, and there is no danger of them out of *France*.” Go sober steps, and not precipitately to give Money. Let us see
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the return of your Bill of Attainder against Lord *Danby*, and the Lords in the *Tower*; you may else, for ought I know, give Money to bring the *French* in. When that day comes, I will speak my mind.

Mr *Boscarwen*.] It is worth your consideration, whether the Nation be able to support the charge it is already under. Therefore unless some course be taken to mend the ill management of affairs, you may do some good; else you will throw all away. I see we have no offer towards alliance with *Holland*. First we made war with *Holland* upon the *Guinea* company's account, and then we thrust the *French* King upon a war with them. I would be glad to understand whether the Money that has been spent, was applied to make alliances to secure us. If we have only a fleet at sea, without any other help of alliance, it will eat us out; and consider, at the same time, how the Money given for the Navy has been diverted to other uses; else all you can do, is to no purpose. Consider how Money arising from the Customs, which ought to go towards the charge of the Navy, has been diverted, whether by pensions or otherwise; else all is to no purpose.

Mr *Pepys*.] It is easy to foresee a great deal of work cut out for me for another time, and I would not do it in general, but to full satisfaction; that when you enquire into the present condition of the Navy, every one of these Motions may be added. It is natural for you to enquire, what is become of the Money you gave for the Fleet and for the Stores, and what Religion the Commanders are of. I move, therefore, that you will order *Thursday* for consideration, &c. and that these be the heads of your enquiry, for your satisfaction.

Mr *Bennet*.] I do intend to give Money, &c. and so I shall save that Motion; but not only that, but I would see what Protestant Ally we have. We have forsaken all but the Popish and the *French* side. The necessity of the Fleet will make you all beggars, when you pay twelve pence for six pence value, as they manage it. The *Hollanders* could say, "All their Money is gone, and the way to bring *England* into subjection, is to make *England* poor."

poor." And as they have managed it, they make you so. As to favouring Popery in the Navy, a Captain was turned out for calling his Lieutenant "Papist," that was so, and I will prove Popery in your Fleet, at the Bar. There is not a man in the Fleet, that has served in the Fleet since the King came in, but was made by the Duke of *York*. Prince *Rupert* had not the power to make a Boatswain. Bring us once upon a Protestant fund, but let us never give Supply to be cozened of it by these villains.

Mr *Pepys*.] This point of Religion in the Fleet, that this Gentleman seems with so much vehemence to assert, and will justify, on my conscience is a mistake. I never heard of it, and it was not in my time, to my knowledge. Pray order it to be heard at the Bar. But that a general reproach should be cast upon the Navy, because the Duke of *York* named Officers!—The Duke is unfortunate, and with my life I would rescue him. But I offer it to your consideration, whether any Prince was ever fitter to name Officers for the Fleet, than he. From the moment I have been in employment, I never knew that the Duke gave countenance to any one Catholic, as a Catholic. I do affirm, that, by all the care and inspection that could be taken in the Navy, there was not one Catholic in it from top to bottom, as far as it was possible for me to know. There was one only suspected, and he not in the Navy: Since that he is come in, and will submit to any inspection—For myself, possibly *Bennet* may speak with some reflection. I am the man of *England* that have passed the most solemn inspection of my Religion. In the devotion and whole tenor of my whole life, I have been as good a son of the Church of *England* as any man. In the name of God, go on in your inspection, &c. I am so far from suspicion of Popery, that I am sure I shall merit quite otherwise.

Mr *Bennet*.] Give me your Warrant, and I will fetch the Captain that shall make good, that he was turned out, &c. for calling his Lieutenant "Papist;" and moreover, Sir *Roger Strickland* is about the Court, &c. And I can tell you of another Captain that has never taken the

Oaths,

Oaths, &c. What testimony *Pepys* has given you of his Religion, was this Parliament.

Colonel *Birch*.] I am glad to see things change, that we may debate things without the consequence of Money. I take it, that the House will not let the King want Money for public occasions, but they will see how it will be employed, before they part with it. I think we are not disputing now, who are Protestants, and who are Papists: I do not know, for Papists take the Oaths apace, in most parts. You were told, the last Parliament, of ninety ships, and that they were all in good estate, except five or six. I would know whether that be so, when you consider the Navy; and their War Stores sufficient; also at that time, the best of the Fleet was out upon service; where they are, and what they need, that they may be drawn together for your service. It has been observed to you, "That when the Fleet went out, from the Boatswain to the Admiral, they went under the consent and test of the Duke of *York*." Your business is to enquire whether the course of the Navy is not turned. He that will live in a known sin for nothing, will do any thing for Money. Those who are bred betwixt *London* and *Blackwall*, will bring home the Fleet to their wives and children. But tarpaulins are now laid aside, and Gentlemen are taken in (I like them in another employment, but not in this.) As to the charge, and misapplication of the Money, and other particulars of taking tarpaulins, for want of skill themselves that have command, &c. and so increase the charge of the Navy, I would consider that.

Colonel *Titus*.] Whoever speaks against the management of affairs, has as easy a subject, as he would have a hard one that speaks for it. A Physician that should talk very learnedly of my disease, and tell me of my extravagances which brought me into it, and assure me that I must die, would be very uncomfortable. Suppose I build me a house, and I give my Steward money to buy bolts and bars, and he go away with my money, and buy none; shall I therefore take a resolution to have none, and expose my throat to be cut? Because I am angry with my

servants, shall I be angry with my security? I move you for a day to consider the general State of the Kingdom, &c.

Mr *Love*.] I would be informed what number of the thirty ships you gave Money to build, the last Parliament, are built and launched, and of what dimensions they are? In *April* last, they were in great haste for the Money to buy timber, else the bark would not run. I would know what Merchants are unpaid for hemp, and whether the Merchant-ships, that were added to the Navy the last year, are paid, and in what Treasury the Money that is not paid lies?

Mr *Garroway*.] I could have wished, that this present State of the Nation had been done privately to our hands; but I would have the Gentlemen know, that they are to give satisfaction to all Questions debated; and no particulars, but the general State of the Nation, to be considered on *Thursday*.

Mr *Seymour*.] I take notice, that something particularly has been said which concerns me, in the employment I am in, as to Money. I have received 470,000*l.* whereof 70,000 is in my hand, and the rest is actually laid out upon the ships. If you had sooner begun your enquiry, you had been better satisfied. There has been 100,000*l.* for the Ordnance, &c. and some remains unpaid in the Exchequer.

Resolved, That this House will, on *Thursday* next, take into consideration the State of the Kingdom, and how the Navy may be made more useful for the defence thereof.

[In the Afternoon the Lords, at a Conference, agreed to the Bill of Attainder against the Earl of *Danby*, with two Amendments only, to which the Commons agreed.]

Tuesday, April 15.

[Sir *Thomas Stringer* reports the search of the Lords Journal, in regard to the giving Copies of the Evidence against them to the Lords in the *Tower*.]

Serjeant *Ellis*.] "Copies of the Evidence, &c." is a thing that was never done by authority of the Lords; and I do the more wonder at it, the Judges being there present,

present, that they were not advised with, &c. We ought, in this case, to go to the Lords for a Conference, to acquaint them, that all your Evidence is discovered; a thing of extraordinary ill consequence!

The Order was read out of the Lords Journal, [as follows:

“The Lord Chancellor let their Lordships know, that the House had ordered, that the several Indictments found against them by the Grand Jury, should be brought into the Lords House by *Certiorari*; and that their Lordships may take Copies of the Articles of Impeachment against them; and that they shall have liberty to search and take out Copies of Records and Journals, in order to their defence.”]

Mr *Seymour*.] You are moved, but I would have you do nothing in it, as the case stands. In the last Parliament, there was art used to make a difference betwixt you and the Lords, to frustrate the fruits of both your good designs; and those that gave the occasion must have a great deal to answer for. You have no title to the Evidence the Lords have received—But as to what is consequential, I would have no man refused taking just means of defence, and the Lords have ordered no more. Those that are Judges, never know the Evidence till the parties are before them, and that they know. Is that Evidence in their Journal? Is it Justice, that the Lords can deny their Members a title to their Journal, till they are convicted? Neither is your Evidence concerned; your concern in it is but consequential and remote. I see not how you can take exceptions at it. They have authority “to search the Journals for their defence,” and it is a method of Justice you will not deny any of your Members for their justification. I would therefore take no notice of it.

Sir *Francis Winnington*.] As for the Justice of the thing, there are some crimes and punishments, as to other persons—The Committee have prepared Articles against the Lords; and they represent to you what is for your service. There is hardly such a precedent to be found, that such as are accused of High Treason, should have a copy of the Evidence against them—Orders for *Certiorari*'s

and that the Lords should have copies of the Impeachment, &c. and have resort to the Journal! I would know, whether a man indicted for Treason can have a copy of his Indictment? It is always denied, and not to be justified, for a man must plead not guilty; there is no justification of Treason. If any thing arises in point of Law, they may have Counsel. But for the Court to take care of the defence of the prisoner, I never heard of it before. The five Lords may as well have copies of our Evidence, if they desire it, by the same reason. In civil causes, they may have recourse to the Record; but to have a copy of Evidence is without any Precedent. Such an indulgence to these Lords is the greatest conspiracy that ever was, never used in common causes. For them to produce an authentic copy of the Evidence against them, and have the sanction of that Court for this; it was never heard of before, and is very irregular.

Colonel *Birch*.] In this I would do as wise men use to do; that is, when we cannot help a thing, to let it alone. I would prevent this for the future, for the Lords have fully the matter before them. But enter it upon your Books, to prevent it for the future.

Sir *Thomas Lee*.] If you enter it upon your Books, and do nothing upon it, as in the Duke of *Buckingham's* case, the Lords will lay that upon you. I would therefore enter the thing, and your Proceedings upon it, and it may prevent the Lords doing it for the future.

The farther Debate was adjourned to this day sevensnight.

Wednesday, April 16.

A Message from the Lords, "That the Earl of *Danby* having [last night] rendered himself to the Gentleman-Usher of the Black Rod, their Lordships have sent him to the *Tower*."

Another Message, "That the five Lords in the *Tower*, have all, in person, brought their Answers to the Articles of Impeachment, [except Lord *Bellasis* *;] and their Lordships have sent the originals to this House, &c."

* It was proved, upon oath, at the Lords Bar, "That Lord *Bellasis* was so ill and lame with the gout, that he was not able to stir

out of his bed, nor to turn himself in his bed without help;" which excuse the Lords allowed.

Mr

Mr *Sacheverell*.] I doubt whether Lord *Bellasis* having not been arraigned as the rest of the Lords, this can be properly an Answer, &c.

Mr *Garroway*.] I think this is well moved, to refer this to the secret Committee. I have heard, that if Lord *Bellasis* be not arraigned, he can never come to Tryal. I would have the Committee search the Lords Books, to see how the matter stands, and then you may advise farther.

Sir *Thomas Lee*.] I would not refer it barely to the Committee of Secrecy, where most are not Lawyers: I would rather adjourn the Debate till to-morrow, and give notice, by your Serjeant, to the Lawyers, &c. to attend. I think that will be more for your service, and in the mean time you may have the Journal searched. The Committee of Secrecy have a great deal upon their hands.

Sir *William Coventry*.] The Committee of Secrecy have been your principal guides in this matter; having prepared the Impeachment, they may take it out of the Lords Books, as an account of the Impeachment, &c. and when that is done, it will be proper for your Debate. Without fitting materials for the Debate, you may take resolutions which may have mistakes in them.

Mr *Trenchard*.] This being matter of secrecy, and not matter of Law, you may refer it to the Committee, &c. It is but barely the Question, whether five Lords being impeached, and but four arraigned, you should accept Lord *Bellasis*'s Answer, without his Arraignment?

Mr *Sacheverell*.] The matter is bigger than it seems to be at the present; for no man can show, where any person has been accused capitally, that he has been admitted to answer by Attorney. In your Articles, you set out, "That all the Lords are in custody, &c." And this Lord does not appear to be arraigned. This very error may vitiate the whole matter. I would have the thing debated in the House; therefore I am against reading the Pleas of the five Lords now sent you from the Lords House; for if you read them, they must be entered into the Journal, and so the Plea by consequence will be admitted with all its errors.

The Debate was adjourned till to-morrow.

Thursday, April 17.

[On disbanding the Army.]

Sir *William Coventry*.] I am for placing the Money [for disbanding the Army,] in the Exchequer. The failure, when you placed the Money there before, was not the miscarriage of the Exchequer, but it was for want of Commissioners of your own to receive the Money out of the Exchequer; it could not else have miscarried before. What moves me to this is, because we had a distrust of the Earl of *Danby* before; now he is lodged in another place, to your satisfaction; and for this reason, now the King removes from employment those you have a jealousy of, that we may return our confidence in him again. Therefore I am for the Exchequer.

Mr Secretary *Coventry*.] I have often heard, that the Government of *London* was made in conformity to the Kingdom of *England*, but not the Kingdom of *England* conformable to the Government of *London*; the Lord Mayor representing the King, the Court of Aldermen, the House of Lords, and the Common Council the House of Commons. And there is the same reason that the Chamber of *London* should not give patterns nor examples to the Kingdom, in having this Money deposited there. The last Parliament would not place the disbanding Money, &c. in the Exchequer, for no other reason, than because they could not confide in the Lord Treasurer—You had a diffidence in him that did govern the Exchequer. Suppose you apprehended that the Benches of Judges were ill furnished, would you not go to Law again if they were well filled? Consider the importance to the Kingdom, that the Army should be disbanded, and the reputation of it, and at whose door it lies. Now you broke upon this very point, the last Parliament. Let it not lie at your door, the not disbanding the Army now. Let us put off this fear of the Army, and put the Money into unblemished hands. Let it not lie at our doors.

Sir *Francis Russel*.] How can we answer it to the Country,

Country, if you put this Money into the Chamberlain of *London's* hands, and he break? You can have no such security for it, as the Exchequer.

Sir John Hotbam.] I was against placing it in the Exchequer, but now I am much more; because we have been cheated there. And though the jealousy of Lord *Danby* be removed, yet think you there are not more about the King, to give you jealousy, &c.? Have they not rode all upon one horse? When an Act of State has been opposed to an Act of Parliament, men dare still offer at it. Yesterday you passed over those who broke your Act, in keeping themselves in arms after the Act had passed for disbanding the Army, without any punishment or brand upon them. I cannot believe, but that those who advised the keeping up that Army will yet fetch the Money out of the Exchequer, and may be made useful to force it out of the Exchequer. When you are made so poor that you cannot creep, then the Army will pay itself. I hope it will never be said we shall be cheated again, as if both the young Members, and the old, had a right to be cheated. Therefore I am against placing the Money in the Exchequer.

Sir Herbert Croft.] This Debate is as warm, as if there was a design to raise a difference betwixt the King and his people.—(*Taken down to Order by Sir Harbottle Grimstone, who took offence at his words.*) He goes on and says, I am very sorry that I have made so ill a step as to give offence to the House, or any particular person here. I supposed that the sense of *Hotbam's* words was a reflection upon the young Members. I say, it is the only interest of the King and the Nation to have the same concerns. I said, "That this Debate was warmly carried on," and putting this Money into the Chamber of *London*, is setting the King's Exchequer different from our Exchequer, as if his concerns and ours had no coherence. The interest of the nation is not maintained without a mutual correspondence and concurrence of King and people.

Sir John Hotbam.] *To Order.* I suppose *Croft* did

not hear me, or did not mind me. I said, "There were idle rumours, from idle persons, of the young Gentlemen of the House, &c." but as for the heat, &c. whoever meddles with as much gunpowder as will serve an Army, may be warm.

Mr *Sacheverell*.] I blame no Gentleman that differs from me in opinion. I hope he will give me the same freedom that I shall give him. It is urged, as a thing desired both by the King and people, that the Army should be disbanded. If so, why should any Gentleman be against it for the same end? In the Exchequer the Money has not been employed, &c. in the Chamber of *London* it has. It is said by Secretary *Coventry*, "That the City is a representation of the Government, &c. and that the Chamber of *London* should not give patterns and examples to the Kingdom." But that is a great mistake. I hope it is no fault in the State to imitate the credit and trust of the City of *London*. There is a difference betwixt giving the King other Money, and this, to free ourselves from a cheat. We have had this done in *Edw. IV's* time, and no exception taken at it then; and every County of *England* had their own Treasurer, in the nature of the Chamber of *London*. In King *James's* time there were Commissioners, &c. but what effect had it? No more than we had in the Exchequer now; the Money came into their hands. But what works with me, is, that if the chief Minister should advise this Money for other uses, what Commissioners of the Treasury dare do the contrary? The Exchequer, you see, has done its duty, but other Officers have not; and it is no reflection upon the Exchequer to place it in other hands, having been done in all Kings ages; therefore I am for the Chamber of *London*.

Sir *Thomas Meres*.] The Treasury is better managed by Commissioners, than by a Lord Treasurer, especially when the Lord Treasurer is the sole manager of affairs of State. When these Commissioners have committed a fault, we will trust them no more; but consider where you were deceived; mend the error where it went. It
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went amiss that the Commissioners were not to take the Money out of the Exchequer, who were not to part with it for any other end than the Act designed it for. Pass your Bill so, with power to the Commissioners, and I cannot believe they will part with the Money till the thing be well done.

Resolved, That the Supply, granted to his Majesty, for disbanding the Army, shall be paid into the Exchequer, [191 to 131.]

Mr *Hampden* reports from the Committee, appointed to inspect the Lords Journal, the Proceedings as to the Appearance and Arraignment of the five Lords, &c. *which see at large in the Journal.*

Debate.

Mr *Seymour*.] Whether these Impeachments of the Lords may be voided by Writs of Error, one Lord having answered by Attorney, is the subject of your Debate. Matters of Impeachment criminal, and for Misdemeanor only, are very different. In Misdemeanor the Lords are Tryers and Judges. In Criminal they are not, till the Lord Steward is chosen. The parties are not arraigned, till they are brought before the Lord Steward, and hold up their hands, &c. Suppose any of these Lords should die, could you not then proceed? Is it not the same case, if there be a disability of appearing? If upon the Arraignment Lord *Bellasis* comes in, it is sufficient, and there is no Error in the Proceedings.

Mr *Sacheverell*.] I think this case is like one that had an effect you would not have. It was that of *Roger Mortimer*, who was not brought to the Bar, and charged; and he had his whole Attainder reversed (for Error) and all his family restored, and he acquitted*. If you will make another Precedent, you may.

Serjeant *Maynard*.] Clearly, if a man be so sick, that he cannot come to the Bar to be arraigned, he can never have judgment of death if he be indicted, and if he be not arraigned where the Common Law implies him in person, he must appear in person. It is strange for Lord *Bellasis* to think his life in question, and he not come to answer his charge. But sometimes the Court

* See p. 127. Note.

fwears Phyficians, to give the Court an account of the person, whether he be in condition to appear. It is true, as is faid, "That they are always tried by a Lord Steward." But their Charge, their Answer, and their Arraignment are before the Lord Steward comes, &c. Lord *Bellasis* is not yet arraigned. I have known, that, when a person could not come, he has been brought in a chair to the Bar, to answer. It is clearly erroneous in the proceeding, and an acquittal of the person, though guilty, if he come not to the Bar, &c.

Sir *Francis Winnington*.] I know it is the rule of Law, that when a man is capitally accused, nay, where the crime will amount to corporal punishment, he must appear *in propria personâ*, &c. He cannot get an Attorney to be hanged for him, or punished for him. Lord *Bellasis*, because he cannot come in person, has sent his Plea in writing, and the Lords are careful to send all the Lords Pleas to you. In Law, there are several offences. The Treason of one man is not the Treason of another. In the case of the five Lords impeached, if this pass, that one is sick, and not arraigned, they will never come to judgment. There are Precedents, that men have been brought in their beds to the Bar, *in propria personâ*. I take the Proceedings, &c. to be altogether erroneous, to take this Lord's Plea by Attorney; and a Writ of Error may void the Attainder. As to the matter of Arraignment, it is always in Court, before the Lord Steward has his Commission. If he have a Pardon, the Lord Steward sits not. The Lord Steward never sits till issue be joined. The Report from the Lords Journal is, "That there is an Order to assign them Counsel." I would know, when ever there was an Indictment for a capital offence, that ever the Court assigned Counsel before matter of Law did arise? It may be they may have Counsel by connivance; but not by Order of Court. This proceeding being irregular, the Question is, what is to be done upon it? If all appear personally but Lord *Bellasis*, then you divulge all your Evidence, and so must try Lord *Bellasis* over again. Therefore it is proper, either by Message, or what other way

way you please, to acquaint the Lords with it, that we may come clearly to the fact, and have Justice.

Serjeant *Maynard*.] Counsel is never assigned, but at the allegation of the party indicted, that there is matter of Law in his case, and the Counsel, at the peril of his head, cannot advise upon matter of fact; for then he is an adviser of Treason. Advice is only for "matter of form," but the Counsel cannot give instruction "in point of fact," for their defence of their Treason.

Mr *Hampden*.] It is my duty to inform you, that the Lords, upon their Book, &c. have assigned Counsel to matter of Law, and not of Fact. But there is no assignation made to what point of Law; and so Lord *Bellasis* is assigned Sir *Thomas Skipwith* and Mr *Saunders*, as the other Lords had theirs upon the same request.

Sir *Francis Winnington*.] Some *Quæstio juris* must arise upon the defence of the prisoner; upon assignment of Counsel, but not before Tryal; and, I think, the Lords, in assigning them Counsel, have done irregularly.

Serjeant *Ellis*.] As to the Tryal of Commoners, they cannot have Counsel, &c. but to matter of Law, and they are to tell the Court to what Point of Law, &c. When that is told in general, the Court gives them that part of the Indictment, and with the Copy of it assigns them Counsel to argue it. I doubt you will find precedents that the Lords have allowed Counsel to draw an Answer to an Impeachment, as in Lord *Strafford's* case; and Counsel to be by, at the very Tryal. Counsel was heard to the point of multiplying Treasons, &c. As to Lord *Bellasis's* case, if you admit this Answer by Attorney to be an Answer, it may so fall out, as to be none at all. If it fall out that a man be in so much danger of death, &c. you must put off his Tryal. The first step to Tryal is to arraign, and he cannot plead, but in person, in both criminal and capital causes. A man must receive an outlawry in person. Sir *Timothy Reed* was ninety years of age, and he was outlawed upon the default of repairing a highway; and he was brought in person to reverse the outlawry. This was but an ordinary case, and he was brought

brought into Court in a litter, upon mens shoulders. In the case of *Roger Mortimer*, who neither appeared to answer nor had Arraignment, the Attainder was repealed—but he never appeared at all—If you proceed against the four Lords, and not against Lord *Bellasis*, that will be no Error at all; but see where the case is; your Evidence is joint, and so interwoven with that against the rest of the Lords, that, if it be against the four, it is against him also. If Lord *Bellasis* appears, then you must go over all again, and your Evidence will be divulged before he be tryed. I would therefore go to the Lords, to represent to them, that their Court should be a precedent to all Courts, and desire their Lordships that Lord *Bellasis* may appear in person, &c. and make Answer.

Mr Solicitor *Finch*.] I propose it to you, whether a Conference with the Lords in this matter will not retard the Tryals, &c. and not expedite them. I agree that a person arraigned must plead in proper person, and suffer in person; but whether this be Arraignment, is another Question. Every man must be arraigned in the Court he is tryed in. He does not here hold up his hand at the Bar. He has only given in his Answer, what he will insist upon. Lord *Bellasis* cannot be tryed without personal appearance; and when the Lord Steward is appointed, then he must hold up his hand at the Bar. In point of Error, you may proceed against the other four Lords without Lord *Bellasis*. An Indictment of twenty for one fact, is of several men, and they may have twenty Juries, a several Record against every one of them, and several Pleas. In point of prudence, I can say nothing to that, how far the Evidence against the other four will be divulged to your prejudice, who are prosecutors. But why should you not prepare your Evidence to proceed upon them all? The Court will not force you to hasty proceedings; but by that time your Evidence is ready, the Lords may force him to appear. I move, therefore, that you will cause Evidence to be ready for Tryal, &c.

Serjeant *Maynard*.] I would not have the House misled in matter of Law. I would have *Finch* answer me, whether

whether Lord *Bellasis* must not plead before he comes to be tryed by the Lord Steward? The Proceſs is not to be tryed; but to plead guilty, or not guilty; and iſſue muſt be joined, before he comes to the Lord Steward. Arraign-ment is only his being brought to the Bar, to confeſs or deny, &c. If you try Lord *Bellasis* alone, all your Evidence will be divulged before, in the Tryal of the four Lords. If you give liberty to perſons that are to be tryed to know what is proved againſt them, and then to give answer, they will have more privilege to deſtroy Religion and the Government, than they have in the Tryal for a two-penny triſle.

Mr *Hampden*.] I pretend not to the knowlege of the Law, but I may judge a little of things, by reaſon. If you conſider what the Arraignment is in the Lords, &c. you may eaſily know the manner of Proceſs. You are as a Grand Jury; and the Lords are in the nature of a Jury and Judges. The Indictment is read to the Lords, the priſoners, and they are to ſay guilty, or not guilty. But inſtead of that, the Lords have given them time to put in their Plea. But when the priſoners come again, they come in the nature of being before a Jury: The Indictment is then repeated; here is your charge, and there is your Answer. Then comes the Queſtion, Whether it be a good Plea or not? And ſo you are paſt the Arraignment. Now the Queſtion before you is, “Whether in Parliament they ought to appear in proper perſons, &c.” The objection is great. Thoſe that have not been called to answer —Whether that is not a ſufficient proceſs, being called to answer? In the caſe of *Cromwell* Earl of *Effex* (in *Hen. VIII.*) he ſent to adviſe with the Judges, “Whether an Attainder could not be in Parliament, and the perſon not called to answer his charge?” The Judges ſaid, “That the Parliament was an high and honourable Court, and would do juſtly, and that it was a Parliament-caſe, and they could give no Answer to it.”

Serjeant *Ellis*.] I would gladly know what to do in this caſe. If you ſay that Lord *Bellasis*'s is no Answer, then you aſk whether he muſt not answer in perſon;
and

and then you cannot reply to it. If the Lords take it for an Answer, and you take it for none, then the Lords and we differ in the matter: *Cromwell's* case, in *Hen. VIII.* was of an Attainder by way of Bill. The Question was upon an Act of Parliament, against a man never called to answer his charge. The Judges said, "They hoped the Parliament would never do it;" and *Cromwell* was the first man that suffered by Act of Attainder who was never brought to answer. I think this of Lord *Bellasis* is no Answer.

Sir *William Pulteney*.] The Question is, "Whether an Answer upon such a disability, &c. be sufficient? &c." Certainly it is no legal binding Answer, and certainly no Judgment can be upon it but by Bill, &c. in case he come not to answer, &c. As for this Answer, it is impossible it can be an Answer. When this Lord is brought to the Bar, he may plead what he pleases; he may vary from this, and put in another Plea, and this will be but a piece of waste Parchment. I would desire a Conference with the Lords, and let them know, that this is no legal nor binding Plea, and they can give no judgment upon it, but by Bill.

Mr *Powle*.] I acknowledge I am unprepared to speak to this Question; but what occurs to me, I shall present you. I agree, that no man can be tryed, but in proper person, and so this is Arraignment at Law, &c. But in Parliament, the Plea being by writing, there may be a difference, &c. When the Plea is drawn, and the Party's hand to it, it may stand; but when he pleads by word of mouth, and in proper person; there is so great a distinction between parliamentary proceedings, and those of inferior Courts, that it will much difference the case. Why this Plea will not do, with his hand put to it, I am yet to seek. No man absent can be tryed for his life. In the precedent, now cited, of Lord *Cromwell*, &c. there was a particular Bill of Attainder that condemned him, and he was never brought to Tryal. In the case of *Roger Mortimer*, in *Edw. III.* he was judged and condemned by the Lords,

Lords, and never brought to say any thing in his defence*. This was so much against natural Justice, as well as course of Parliament, that it was a sufficient ground to reverse that Judgment. There are but these two precedents of persons condemned unheard, and I hope there will never be more. I make a great distinction betwixt an Answer subscribed, that they will stick by, in writing, and a bare verbal Answer.

Sir *Thomas Meres*.] The Order of the Lords is, "That the five Lords shall send in their Answer." I speak it, to show that their Answer may come by another hand. I desire you will see farther, whether Lord *Strafford* was not arraigned before the Lord Steward.

Mr *Hampden*.] The four Lords Answers being called for in the Lords House, and not come, they were sent for in person; but Lord *Bellasis*'s Answer being in writing, he was not sent for, but his writing accepted by the Lords.

Mr *Seymour*.] I shall offer something as to method. This relating to the Lords judicature, I would be tender, if the nature of the thing would bear it. Usage of Parliament is Law of Parliament, and what is right, is right to each House. You cannot be too cautious in taking away power from them that will never want will to disturb the public Peace. I would have one instance given, that ever any man was arraigned before the Peers sitting in Parliament; (which is no proper Court to judge them.) The Chancellor says, "The Impeachment is brought up, and they are ordered a Copy of it, and they require time to give in their Answer, &c." As long as the Chancellor is in the Chair, the Lords are in their Court of Parliament. In criminal matters, &c. the Lords are in the nature of a Jury, not of a House of Lords, and they are Judges of matters of fact, and possibly of matters of Law. I would refer this to a Committee, to enquire into the manner of proceeding in these cases; and, if it appear that the Lords have committed Errors in their proceedings, they will go

* *Roger Mortimer*, Earl of *March*, was attainted for the murder of the Earl of *Kent*, 3 *Edw.* III. His Grandson was afterwards restored.

in another method; and till then, you are not ripe to take notice of it to the Lords.

Mr *Garroway*.] What would you name a Committee for, when Gentlemen have all declared their opinions; “That if this way of proceeding be admitted, &c. the Lords may have Writs of Error to destroy all your proceedings against them?” As I am informed, when Lords are tried in full Parliament, there is no Lord Steward.

Serjeant *Ellis*.] Whether the Lords are arraigned again, or whether there is to be a High Steward or not, is not the Question. But this is already their Arraignment, and this is their Plea. If they are arraigned again, they are asked, what they have to say? And they may put in a new Answer, and so all your time may be lost—But they proceed upon this Answer, from which they cannot vary.

Sir *Francis Winnington*.] The Reporter said, “That, as soon as the Answers were read in the Lords House, they sent them to you.” The Lords have not yet entered their Pleas to be recorded in their Court, and so they are not conclusive. If they be entered, then they are sent down to you, to know whether you will reply, or demur. I doubt that Lord *Bellasis* will not agree that to be his final Plea; for he has in effect answered nothing; so that the Lords have not sent them to you to reply. In Tryals in interval of Parliament, and *in pleno Parlamento*, the Clerk of the Crown says, “You have pleaded so, and been indicted so, and you put yourself upon your Peers.” If any of the Lords should say, “I wave my Plea,” what a condition are the Commons then in, for they cannot come provided to prosecute? But since the Lords have not entered these Pleas as final Pleas, you may consider of it, and if the Lords have been irregular in their proceedings, you may desire a Conference, and say, “That Lord *Bellasis* has not appeared, and that the matter will be erroneous if we proceed.” It may be the five Lords have perplexed this matter, and may say, “Lord *Bellasis* is sick, and we will plead, and so the Evidence will be piece-meal.” First, Lord *Bellasis* does not legally appear;

appear; and next, as our Charge is intire, so the Lords may not answer it by piece-meal.

Ordered, That it be referred to the Committee of Secrecy to examine the manner and ways of proceedings in Parliament, about Lords being arraigned, and whether a Lord can be arraigned without coming in person, &c.

[Adjourned till *Monday*.]

Monday, April 21.

His Majesty, in the House of Lords, acquainted both Houses, "That he had this day established a new Privy Council, the number of which should never exceed thirty*: That he had made choice of such persons as were worthy, and able to advise, and was resolved, in all his weighty and important affairs, next to the advice of his Great Council in Parliament (which he should very often consult with) to be advised by this Privy Council: That he could not make so great a change without acquainting both Houses of Parliament; and he desired them all to apply themselves heartily (as he should do) to those things which were necessary for the good and safety of the Kingdom, and that no time might be lost in it †."

Tuesday, April 22.

The disbanding Bill was read the first time.

Wednesday, April 23.

Mr *Treby* reports the Opinion of the Committee of Secrecy, concerning the Lord *Bellasis's* Plea, &c. and the rest of the Lords, [as follows, viz. "That Lord *Bellasis*, being impeached of High-Treason by the Commons, cannot make any Answer but in person.

* The former Council was composed of fifty.

† At last the King was prevailed upon to dismiss the Council, which was all made up of Lord *Danby's* creatures; and the chief men of both Houses were brought into the new Council. This was carried with so much secrecy, that it was not so much as suspected, till the day before it was done. *Burnet*.

It does not appear that either House acknowledged the compliment of this speech by Address, which is now become almost a

matter of course on much less considerable occasions, or even, that any such acknowledgment was moved for. *Ralph*.

The House of Commons received it with most coldness, where the contrary was most expected, and the pretended knowers among them, who were not of the Council, pretended now to know nothing of it, to expect new revelations, to doubt it might be a new Court-juggle, and to refer it to time to tell what it was in truth; in the mean time to suspend their judgments. *Temple*.

“That the several writings put in by the Earl of *Powis*, Lord *Stafford*, and Lord *Arundel* of *Wardour*, which they call their several Pleas and Answers, are not Pleas or Answers, but argumentative and evasive; to which the Commons neither can nor ought to reply.

“That if the Answers of the said Lord *Powis*, Lord *Stafford*, Lord *Arundel* (as well as that of Lord *Petre*) were sufficient, yet there ought not to be any Proceeding against them, or any of them, untill Lord *Bellasis* also put in a sufficient Answer in person.

“That the Commons do demand of the Lords, that their Lordships would forthwith order and require the said Lord *Powis*, Lord *Stafford*, Lord *Arundel*, and Lord *Bellasis* to put in their perfect Answers; or, in default thereof, that the Commons may have Justice against them.”

The Consideration of the above Report was adjourned to the next day.]

Thursday, April 24.

[Debate on the above Report.]

Sir *Harbottle Grimstone*.] Those persons tryed in *Hen. VIII*'s time, were not arraigned before a Lord High Steward was appointed. Lord *Hussey*, *Anne Bullen*, and Lord *Rockford*, were arraigned before a Lord Steward. As for that of Lord *Powis*, it is a direct Answer for the other three. It is an Answer, if the Lords overrule not the Demurrers.

Serjeant *Ellis*.] The Lord Steward is the person that gives judgment; and he gives judgment where the Indictment is found below, and brought up to the Lords by *Certiorari*. And in that case the King makes a High Steward. But our case is, as they are a House of Lords. Before Lord *Strafford*'s case, there was not a High Steward appointed. I confess, that sometimes others have been in the Chair. 2 *Hen. VI*, in Sir *John Mortimer*'s case; it appears clearly on the roll, that that was an Act of Parliament upon a declaration of Treason upon 25 *Edw. III*. He was accused of suspicion of Treason, and committed to the *Tower*; and the Indictment was removed to Parliament. How we come to say breaking Prison, when committed for Treason, to be Treason, I will not puzzle any man. At that time a Bishop was Chancellor; and a Bishop could not sit, be-
cause

cause it was a case of life; and so the Treasurer of the King's Household was put into the Chair. He was appointed by the Lords; but if they will make a High Steward, the Lords are left to their own pleasure.

Sir *Edmund Jennings.*] Suppose Lord *Bellasis* should die, shall no proceedings be? It is to the amazement of all the people that you proceed not—Lord *Danby* is now no longer behind the curtain, and I will suppose no man else is; therefore I propose that you would proceed to bring the Lords to their speedy Answer, that you may proceed upon them all together. But if the case be otherwise, proceed against four of them, if you cannot against the fifth.

Serjeant *Ellis.*] I have it in command from the Committee of Secrecy to tell you, that they will not give Evidence against the Lords for any thing done above five years last past.

Sir *Fr. Winnington.*] If you inform the Lords so much, they will enter it upon their Book, and so persons may have notice, that there be no delay in the Tryals. But farther, consider what the Managers should say at the Conference—Lord *Bellasis's* Plea is no Plea, being by Attorney. Lord *Petre's* is a good Plea, if not guilty, and we may come to the matter with him. The other three Lords plead not guilty to part, and no Plea to the rest; now the Question is, whether you will not send to the Lords, "That, if the Lords Prisoners do not give in their Answer in reasonable time, the Commons will ask Justice against them;" (else it is in the power of a Lord in the *Tower* to come to Tryal, or not, and he may put in odd Pleas *ad infinitum*,) "and if they put not in their Pleas in chief (as the Law terms it) that we may have Justice against them." In Law you may try four of them, but it is monstrously inconvenient, for then we must try them all over again.

Mr *Garroway.*] As to limiting the time to six years, we must submit to what the secret Committee have Evidence for. But I would demonstrate the whole thing: It has been in agitation sixteen years, and I second the Motion of "demanding Justice, &c."

Mr *Powle.*] To what *Ellis* says, to beginning the accusation "but from six years, &c." the Plot has been carrying on these ten or twenty years, and always will be. But as to the five Lords, it is not agreeable to your Evidence that they be bound to answer but for six years, for it would be a hard thing to say there is Evidence for it. I would have it left to the liberty of the Managers, and to desire the Lords at a Conference "That a speedy day may be given to the five Lords to answer, &c." for they have time enough.

Serjeant *Ellis.*] As for the general Plot of bringing in Popery, it has been a great many years, but what concerns these Lords has not exceeded six years. The Indictment must name some place, and a set time, but in course of Parliament we need not name particulars. But to give the Lords satisfaction, I would not name above six years. It may be, some will not be concerned two years.

Serjeant *Maynard.*] It may be, one Witness will swear to "seven years." It will seem a hard thing that a man must be put to answer for his whole life. I would confine it to "seven years."

Sir *Henry Capel.*] The King has ordered the Lords of the Treasury to give the secret Committee 100*l.* and it is paid into the hands of their Clerk. I move that you will address the King for 300*l.* more; for else there will be no sending into the country for Evidence. It will put delay into the business without it, and the Lords will be at a stand.

Sir *Thomas Clarges.*] No Money is issued out by the Lords of the Treasury but upon record, and for so small a sum as this, I would not have it upon record. But there lies a dormant Privy Seal in the Exchequer, and from that it may be paid, and I would address, &c.

Sir *John Trevor.*] The secret Committee has expected this, four or five days ago. I know there is a dormant Privy Warrant for secret service, and I desire the Gentlemen of that Committee may address the King about it; but it is not fit to be done by a public Motion. For this to

go abroad in the world to be on your Books, is not fit for your credit.

Sir *John Hotham*.] I hope you will never enter into your Books, that there was ever such a thing done in such an Assembly. I say it not out of vanity; but, as poor a man as I am, I protest, I would give it out of my own Purse rather than this should be by a public Motion. I could not have believed but that the Commissioners of the Treasury would have done it out of their own pockets, rather than have made it public here.

Mr *Powle*.] Though there be a dormant Privy Seal, &c. neither Treasurers nor Commissioners can dispose of it without the King's leave. If none of the Commissioners are here present, some Gentlemen will take care of it. Since I had the honour to be near the King, I cannot but observe, that there was never a Prince more inclinable to give his people satisfaction for the good of the Nation.

[The Report was, upon the Question, agreed to by the House.]

Friday, April 25.

Lord *Bellasis's* Answer was read, and Lord *Danby's* Plea*.

Sir *John Knight*.] Lord *Danby* was impeached in the last Parliament, when he sat in his place; but he has done worse since the last Parliament was dissolved. I am unable to give answer to this, especially when it is called "a stamped Pardon by creation." I would refer it to the same Committee. It is of vast importance.

Serjeant *Ellis*.] I think this matter is of great weight, and worthy of your most serious consideration. The Earl of *Danby* has put his life upon his Plea, and if it does not stand good, your Articles are in force. He fully relies upon his Plea. I will give no opinion at present upon it, but I move that some select number of Gentlemen may be ordered to prepare, and consider the manner how this Pardon was obtained. You are not yet

* They were sent in a Message from the House of Lords, where these two Lords appeared this day, and put them in, in person.

ready to consider; the more you do, it will be the better, and in a day or two's time you may give an Answer to it.

Sir *Francis Winnington*.] Since I have had the honour of being a Member of this House; great matters have been discoursed here. This is as great as can be. All the Plea is mentioned under the word "Protestation to all the Articles, &c."—And they have no more operation in Law than if not mentioned. The Earl of *Danby* has gone so far, as that the Commons are not obliged to any Answer. He has left no room to prove any one Article; for his Pardon is amounting to a confession. Should this Pardon have allowance, without the legal course of obtaining it?—If great men do exorbitances with Pardon, it takes away *culpa* as well as *pœna*. There's an end of all Justice against men, if such Pardons are allowed. No man is more tender of blood than I am; but put it in some way, that the matter may have some representation, to see what former ages have done in such cases, and see whether this is not a rare thing; and see what the Commons ought to stand upon. It is too big for a resolution of a Committee; I would have them only state the matter, and then consider what a condition we are in, as to Law, against such great men as these, when all we have is at stake.

Mr *Garroway*.] I honour the Gentleman in his station—But what becomes of us all, if this Pardon pass? If it had been done barefaced, it had been all one to me. Preparatory to referring it to some Committee of the Long Robe, they may inform you how the case stands in their Books, and you may take deliberation what to determine in the matter. Now I am up, I would move you to have those whom you refer it to, consider, whether you will not let this Pardon be pleaded for all, and then we may consider what that "All" is, that is pardoned. Next I move, that when the Report comes from the Bar about the Money, (let it come when it will,) that you give no Money till you have cleared yourselves of the Earl of *Danby*, before you proceed upon any Lord whatsoever.

Sir

Sir *Thomas Clarges*.] I think it not fit to proceed till the Committee shall state the matter in point of Precedent. But I differ with the Gentleman that said "He cares not in what form the Pardon is done." For if that be not differenced, Chancellors may put Seals to raising Money, or any thing.—*Per se solum, aut cum aliquâ aliâ Personâ*. They may be females as well as males—I am of opinion, that we ought to have right in this, before we give Money; for the King has been deceived in this Pardon, and so has the Nation. But I would not put the Committee to needless trouble—I believe there are no farther Articles but since *March* last, and this Pardon does amount to a confession of the whole, &c.

Colonel *Titus*.] By the trouble this great person has given us, we may plainly see how much easier a favourite undoes a Kingdom, than serves a Kingdom. The man possessed with the Devil, in the Gospel, had his body torn, and foamed, before the Devil could be got out. Of *Danby's* protestations of not guilty, in his Pardon, I believe not one word. And I believe *Danby* does not believe one of them, else he would not need a Pardon. If he need it not, with what face can he plead his Pardon? In that he acknowledges his guilt, and if all knew as much as he, he stands in need of a greater. What offence is there not mentioned in this Pardon? And yet, what offence has he not done that he stands not in need of a Pardon? If by villainy he has got honours, if by rapine an estate, and if that Pardon is pleaded to a House of Commons, and made valid, ours will be like the *Athenian* Laws, to catch flies, while wasps and hornets break out. Will any good man have encouragement to do good, or discouragement for ill men? Has *Danby* any hopes of another world? He would never then be guilty of such crimes, to stand in need of such a Pardon. I move you "That a Committee of the Long Robe may search Precedents, and give you an account, &c."

Sir *Henry Capel*.] I differ with the Gentleman but in one particular. He says, "as *Danby* has given us trouble in his prosecution, so he has at his exit"—If it be as he

says, the Articles are out of doors, and the Pardon only remains to be considered—When great men have committed great crimes, and such a body of men as the House of Commons have knowledge of them, we ought to bring such a man to Justice—And since he has got a Pardon, it is worthy of the consideration of the whole House, and not of a Committee barely. And therefore I would debate it in the whole House.

Sir *John Trevor*.] I doubt it will be a hard matter to put a limitation upon the King's Pardon unless by Act of Parliament, and that Act is yet to be found out. As for the King's Coronation Oath, Lord *Latimer* and *Lyons*, in *Edw. III's* time, were impeached by the Commons, and after their Tryal and condemnation, they were both pardoned. And this was at a time when arbitrary power was as high as ever since. In *Richard II*, this Pardon was complained of by the House of Commons, but the result at last was, they impeached the persons who procured the Pardons, and looked into the manner of procuring them. This I say, that the Committee may view the Precedents next, as to the manner of gaining of Pardons. When gained so much to the dishonour of the King and Kingdom, they were complained of and revoked. And next, though *Danby* has put his life upon this Pardon, and this Pardon be void; yet it lies upon your honour by Bill to show the King, how his honour is concerned in it, and the Nation's, and to desire him to revoke it.

Mr *Sacheverell*.] I differ from most Gentlemen, &c. or else I would not trouble you now. My opinion is, that this Pardon is illegally grounded, and that it is void in itself. If it pass, that this is a good Pardon, and that all such crimes as this Lord stands charged with, are pardoned at one blow, farewell all! There is one thing we ought to take high notice of; the Plea lays all the crimes, that he stands charged with, upon the King. I would show him, that this Plea of laying them upon the King, deserves as great an Article against him, as any of the rest, &c. and I would have it added for one.

Sir

Sir Thomas Lee.] If you go on without an Act of Parliament, and make this Pardon void, you save yourselves the labour of all proofs, and so you deprive him of all defence—You should not hinder the proceedings of the secret Committee; but if other matters are before you, prepare them into Articles, and go upon them; and then you may spend your time to consider whether it be proper to void this Pardon by Act of Parliament.

The Plea and Answer were referred to the Committee of Secrecy, to enquire into Precedents, &c.

[April 26. omitted.]

Sunday, April 27.

Several artifices were used to divert the business of this day, which was, "To consider how to preserve the King's Person from the attempts and conspiracies of the Papists, &c" by engaging the House into other Debates*. Which being apprehended, occasioned several loud cries, "To the business of the day;" which was thus introduced by

Mr Harbord.] Mr Speaker, these several things started being off from your hands, I shall say something to the occasion of your meeting upon this extraordinary day. It is, "for the security of the King's Person, and for the preservation of the Protestant Religion established by Law." Nothing can be so fatal to our Religion, and by consequence our Laws and Liberties, as the danger of the first. Should his Majesty fall by any unhappy stroke, it would not be in our power to defend the Protestant Religion long. The way to do it, is to take away those men that are likely to destroy him, which are the Papists. And though it is not always convenient to take Precedents from ill times, yet, upon this occasion, I hope you will pardon me, if I make use of one. There were Gentlemen in the late times of usurpation, who exposed their lives and fortunes for the

* Among other things, an Address to his Majesty was reported, and agreed to, desiring him to give order for executing of Pickering, and likewise to give order to the

Judges, to issue out their Warrants for executing the several Popish Priests they had condemned in the several Circuits. See the Journal.

King's Restoration, called "Cavaliers." *Cromwell* found that nothing so much obviated their designs as to banish them from *London*, and he did it only by an Act of State; an Order of Council formed into a Proclamation; such a one as did execute itself. Many Catholics will now take the Oaths, and, under the notion of inhabitants, creep into Houses. Now since the danger of the King's Person is so great, by reason of their villainous conspiracies, I move, that there may be an Order for bringing in a Bill, to banish all *Roman* Catholics from this city, &c. for some time, and I hope that, in the interim, we may make such Laws as may put power into such hands as may preserve us. My meaning is, that no Papist shall stay in town but upon very good Protestant security. Unless you take some such course with these sort of men, you can have no safety.

Mr *Bennet*.] I will speak to the Order of the day. It is my opinion, and ever was, that the King cannot be safe, unless the Papists be nothing. They have as great a zeal to bring in their King at *Brussels*, or here, (some say he is here *,) as the Cavaliers had to bring in this King during the Rebellion. As to the Plot, &c. I believe this design has been carrying on ever since Lord *Clifford's* Ministry, for destroying the King, and making the Duke to succeed, and the thing was so very near effecting, that, if you had not discovered it, it might before now have been done. *Coleman's* Letters to the Pope, Cardinals, and *French* King's Confessor, were all penned and sent by the Duke of *York's* command. I consider truly how hard a work you have upon your hands. The Duke of *York* has as much right to succeed his brother, if he die without heirs, (which God forbid!) as my son has to inherit my estate after me. Therefore I desire that by some Law we may have power to arm ourselves against him, if he would bring in Popery amongst us. If the King have a son, then we are out of fear; but if a way cannot be found out that the King may have a son, then we are to go another way to work. I do believe that

* The Duke of *York*.

this Plot had not been carried on without the Duke of York's approbation, and that being so, you are to go another way to work. We know that *Hen. VII.* was attainted; should the Duke be so, the Lawyers will tell you, "that the possession of the Crown clears away all Attainders." I would have the Lawyers speak to it, and I would not sleep till something was done to secure the King's person, and the Protestant Religion.

Mr *Mostyn.*] The Duke of York, I believe, is not the only occasion of our apprehensions of Popery, &c. It was his quality, not understanding, (*He meant the Plot, it occasioned a loud laughter,*) that the Papists took encouragement from. But still the Dutchess of *Portsmouth* is here; from whom I apprehend as great danger, as from the Duke of York.

Sir *John Knight.*] What will signify banishing the Papists out of town for four or five months, unless you secure a Protestant Succession? When Idolatry was set up in *Israel*, then they were led away captive, &c. What we aim at is only for posterity, and but for our souls; and this is a proper day for that consideration, that we may overcome those persons that would subvert our Religion, which the very *gates of Hell cannot prevail against*. I think it not safe to let the Duke be out of the nation. And in the last Parliament, it was a reason given against our addressing the King for removing the Duke for some time from Court. I do not know of what ill consequence it may be for the Duke to be in the hands of those contrivers of the destruction of both King and Kingdom. The Duke has had Letters and correspondences from the Jesuits, and now he is amongst the thickest of them. I would address the King, therefore, to let him see how much it is for his interest to persuade the Duke to be a Protestant, and to order the Duke to return into *England*.

Sir *Hugh Cholmondeley.*] I have a heart full of sorrow for the occasion of our meeting to-day, and of this day's Debate. It is a sad supposition, that the presumptive Heir of the Crown should change our Religion. The
short

short Question is, whether there is any safety for the Crown, whilst the Papists wish the King dead. We can never be safe, till it be the Papists interest to have the King amongst the living, that their condition may be never the better for having a King of their own Religion. Therefore till you make it the interest of the Catholics to wish the life of the King, you do nothing. In general, I must say this, that we must do something as in the case of an infant or lunatic—Such an extraordinary case must have an extraordinary way.

Mr *Pilkington*.] The *Israelites* halted betwixt two opinions, God and *Baal*; they put away *Baal* and returned to the worship of God, and were happy. I would have a Committee to consider what has been proposed.

Sir *Thomas Player*.] I cannot but take notice of one Motion. I would be resolved from the Gentleman that moved it, whether it be a Protestant Motion or no—(*It was from Cholmondeley, but that part of his speech the Compiler did not well bear.*) He offered it as a way to render the King's Person more secure, that the Papists be put into a condition of more ease, by being freed from severe Laws, thereby not to be provoked to attempt any thing against the King.

Sir *Hugh Cholmondeley*.] What I proposed, was but by way of supposition. I believe it is impossible to plant Popery to any purpose in *England*, unless they persuade the King to be a Papist, and all the Protestants in *England* to be Papists too; else it will never be their interest to make attempts upon the King's Person.

Sir *Thomas Player* goes on.] We have to do with people of principles to destroy the King and our Religion, and that is the greatest part of their Religion, and which they hope to merit most by; and whilst they retain those principles, we have no moral security from them, unless we serve them as they would us, that is, root them out—We are come to that pass now, that Protestants and Papists cannot live together in *England*; and whilst the Papists have a prospect of a Popish Successor, they will never be quiet, but be always making attempts upon the
King's

King's Person. Consider whither you were going. It is but a few years and a few months, since Offices of the highest trust were in the Duke of *York's* disposal; they paid more reverence to the Successor than to the King himself; and here lay the weight of our misfortunes. The King, a Protestant, upon whom we must depend, neglected, unapplied to; the Duke, a Papist, adored; and why? Because he concerned himself to model *England* according to his own turn. From whence came modeling the Militia, the Justices of Peace, all the fortifications of *England*? Were they not of his modeling? And then came out the Plot to destroy the Protestants, as if they had all but one neck to be cut off at once. I do acknowledge myself to be one of those weak men that can see danger, but know not how to offer you remedy; so great mischiefs do we lie under! But at present I will presume to adventure to offer something to your consideration. Some time ago, I saw considerable Papers and transactions betwixt the Duke and the Pope. I did scarce believe it till I saw it. Some from his Highness to his Holiness gave him occasion of so great joy, (and surely they must be considerable Letters that made his Holiness so merry) and yet they made the old man weep; and that bespeaks excess of joy. Some time before there was notice given of such Letters coming, but they gave great trouble at *Rome* that they came not; but when they were received, his Holiness returned the Duke a most kind and obliging Answer, and her Highness the Dutchess was presented from the Pope with a holy token of consecrated Beads, and other fine things, which I do not understand, and I hope never shall. When the Duke's daughter was married to the Prince of *Orange*, the Duke vindicated himself from being guilty of it, and the Pope was satisfied with it. What has been transacted lately by Lord *Danby*, in having Money given from *France* that *England* might be governed without Parliament, and so enslaved for ever? And this was done, during the Duke's prevalency upon the Ministers. Now I move that you will be pleased to chuse a Committee to examine all the Papers that can be
had,

had, relating to the Duke, &c. and to extract all things done by the Duke, in setting up Popery and arbitrary Government, and whatever he was concerned in that matter, and report it to the House.

Sir *Robert Markham*.] I cannot believe but that the *Philistines* will be upon us, as long as the daughters of the *Philistines* are amongst us. I humbly move, that the Act of Association of 27 *Q. Elizabeth* may be read.

Sir *William Franklyn*.] Our Laws, Liberties, and all that should protect us are at stake now, and are fit to be taken care of; and yet there is something more necessary, and that is the life of the King (which God long preserve!) There is danger from the Papists; they get ground upon us to our destruction. It must be fear that must keep them quiet; and let them see, that when that fatal blow is struck, the Kingdom will rise as one man to prevent the effects of that blow. Let the Act of Association of 27 *Elizabeth* be read, and from thence take some measures for the preservation of the King's Person.

Sir *John Trevor*.] The Papers mentioned, relating to the Duke of *York*, are in the hands of the Committee of Secrecy, and you may command them when you please.

Mr *Bennet*.] If you will have the Duke of *York* come to the Crown, as other Kings do, speak plain *English*. If you intend that, I will prepare to be a Papist.

Mr *Leveson Gower*.] I move to have that part of the Act relating to the Queen's servants, exempting such a number from the Test, &c. repealed.

Sir *Richard Cust*.] When *Hen. VII.* came to the Crown, it took away all disability upon him by Attainder. But his greatest strength to the Crown was not by his match with the Lady *Elizabeth*, but by declaration of his title by Parliament. What if, for your present security, you made an Address to the King, with an humble proposal, that all Offices may be put into such hands (for the people's satisfaction) as shall be recommended to his Majesty in Parliament, and that those Offices should not become void, nor be filled up, upon the death of the King,
but

but by Parliament. I see nothing can render such a proposal undutiful in presenting it, the present state of things considered; and by this means you will be sure of a Parliament upon demise of the King. This I offer as my humble opinion.

Mr Secretary *Coventry*.] I have heard various opinions to-day, for remedy of the dangers we apprehend. We are in great danger, and the remedy is very difficult. The Statutes of *Q. Eliz.* and *Hen. VII.* are of great moment. That of *Q. Eliz.* is not taken for an universal pattern, but adapted to a present emergency only. I desire not a Court to be set up, as in the Statute of Association. I would have no new Court to meddle with men, or the Heirs of the Crown. Let us have our own Laws, else we shall fall into Aristocracy. I never saw a lawful Successor of the Crown disappointed, but, first or last, he came back to the Crown again. To say, because a thing has been so, it may be so; and because a thing has not been so, it may not be so, is as bad. For by that Statute that gave *Hen. VIII.* power to dispose of the succession of the Crown by his last Will and Testament, he might have given the Crown to his footman, if he pleased, and made him King, and by Law too. But surely there were never greater betrayers of their trust, than that Parliament was, to give the Crown to an arbitrary Prince, to dispose of how he would. If we are tender of the Succession, pray let us be more tender of the King, and not take that power from him, so essential to the Government. Shall we in Parliament bring the King to judgment (as is moved?) That all Officers of the Militia, or the Courts, &c. shall not be named but by us, I have as little hope of succeeding in that, as I have reason to be of the opinion of it, that we should think to carry the King with us, and take from him that Government that must support us and him. As to the Papists, they have deserved as ill, and intended as ill, as possible, and it is but justice to extirpate them; but those measures must be prudential, not to proclaim our intentions before we are able to maintain them. Lord *Willoughby*, when he was at *Barbadoes*,
sent

sent order to the *French*, who had part of *Nevis* island, to quit the island by such a day. The *English* and they had lived neighbourly together long; they wondered at it; but, when he came to take possession of the island, he found that the *French* had cut the Governor's throat, and made themselves masters of the island. Provide yourselves first to maintain any great resolution you shall take against the Papists. Now, at such a time that you make a declaration of so high a nature as you are about, set some day apart to consider how to put the nation in a posture of defence; else you put the Papists upon revenge, and yourselves in no posture to execute any thing.

Colonel *Birch*.] That Honourable Person that spoke last to Sir *R. Cus*'s Motion, "for Offices, &c. to be put into such hands as the Parliament should confide in," has said it to be the worst Motion that has been made to remedy our fears, &c. But I am one of those that thought it the best Motion, and I know not why he should be against it, but because it is a good Motion. If you do it not, instead of this being the best day that ever I saw, I fear it will be the worst that ever I saw. We have had many tales of the *French* War from the Gentleman at the Bar (I fear it will never be better.) We gave Money the last year for the *French* War, and we were told of the truth and sincerity of that War; and the same Person tells us, "we are to go calmly in the business of a Popish Successor."—The Counsel is the same still, and I never expect better success as long as we have such Counsel. Must we prostitute Religion?—Notwithstanding his tale of Lord *Willoughby*, and an island, I will go as far as I can for the safety of the Kingdom as any man—And were it for my life, I would take the advice given by *Cus*—But I must return again to the Honourable Secretary. The Declaration of the Succession by Parliament is no new thing. I am sure it proved well in Queen *Elizabeth*'s time. I know not the occasion of affairs in *Henry VIII*'s time; but the Queen's time is parallel to ours, as to the fears of a Popish Successor. Interest will not lie. But I will make an addition to *Cus*'s Motion. Are we come here to give
Money

Money, for some few new men being put into the Privy Council; and shall we do such things as we have done before? I hope the King will not leave one of the Council that was at the giving such advice as we have had. I would not give a penny for such advice. I am the weakest in this great Assembly, but on this point I cannot stay myself. I would support the Government to the highest; but this plaistering and patching spoils all. It must not be the addition of four or five persons to the Council that will do it; it must be thoroughly done. When there are no reserves, and when the King fears no body, when that is done, we shall answer the rest. If the King fell by the hands of violence, the saying that never a Papist should survive him long, so resolutely here by some Gentlemen, has, I think, saved the King hitherto. Till you admit no claim to the Crown, till there be an examination of the King's death in Parliament, you may be safe. As for the Duke of York, I can scarce speak of him without tears. I hope he will come over to us; but I shall never desire to see that day he should be King without it. We know what the Law of *England* says, if any man go over to the Church of *Rome*—*Coleman* said, (when you appointed a Committee to go to him) "I have done nothing but by my Master, the Duke's Order." I have a kindness for the Duke, but I have bowels of compassion for the Kingdom too. I move therefore, "That a Bill may be brought in, that at the fall of the King by any violent stroke (which God forbid!) no person come to the Crown of *England* till that be examined."

Mr Secretary *Coventry*.] It is our Privilege, that, if a Member be reflected upon, he may answer. I am sorry that the Gentleman (*Birch*) is a man of so good understanding, and yet does not understand me right. I appeal to you, Mr Speaker, whether I said one word of fear, but to strengthen yourselves to execute your Laws. I have said my Prayers to-day (I thank God) and last Sunday I received the Communion, and let that be my poison, if I did not believe we should have had a War with *France* last year. Lord *Danby's* Letters to Mr *Montagu*

will show you enough to vindicate me. I wish that Gentlemen would weigh what they say, before they give such reproaches. I have taken the Oaths required, at the Table, and if any man pretend to be the lawful Successor to the Crown, and is not, I will not own him for my Prince, be he who he will. We have heard of the *Jesuits* swallowing the Oaths—We take those Oaths—And I have heard of *St Paul's anathema*, and I will not be forsworn for the King or any man. If you will object against any man, you may, and inform if you please—But for the Parliament to nominate the King a Successor, I say it is against Law and the Government. And if I am to blame, I will expose myself, but I would not be reflected on.

Colonel *Birch*.] This I said, “That Honourable Gentleman was an instrument to persuade and deceive us into a *French War*, and there was not one word of it true.” When the Parliament did desire the King to enter into a league with the Confederates, the return was, “That it was an extravagant Motion.” And who was the pleader for it, but this Honourable Person?

Sir *Robert Carr*.] I am surprized at this Debate. Few that know this Gentleman (the Secretary) but can justify him from these aspersions.

Mr Secretary *Coventry*.] As for the business of the ships, that was my brother Secretary's part (*Williamson*.) But *Birch* said, “I told you no truth, &c.” I aver, that if any man told you, that what I did say was a truth, that I did not believe to be a truth, if an Angel from Heaven said it; he would not go back again thither. I would have *Birch* let me recriminate what he did in the Parliament of 1641, as well as he recriminates on me now.

Mr Colt took the Secretary down to the Orders of the House, for recriminating upon Birch, for what he did in 1641.

Serjeant *Maynard*.] These things lose your time unnecessarily, in thus recriminating on one another; and it is against Order.

Mr *Bennet*.] We have been cheated sufficiently of our Money; pray let us not be cheated of our Debate about a Protestant Successor too.

Colonel

Colonel *Birch*.] If you go not up the stream, you will go down. Pray, Mr Speaker, hold us to any Debate that has been proposed, or move what you please.

Mr *Sacheverell*.] Now a Bill has been moved, pray make it effectual. It was moved "to banish the Papists twenty miles from *London*, and every one of them not to stir five miles from home, &c." whether you will order it, though they have houses in town, &c.

Sir *Francis Russel*.] I move for an explanatory Vote, "That the Duke of *York* is the occasion of all these jealousies of the Papists;" and so have the Lords concurrence to it, and then you will have some ground to go upon.

Mr *Boscarwen*.] As to what is said by Secretary *Coventry*, of "being sworn to the King's lawful Successors," what is so by Act of Parliament is lawful, and it is *Præmunire* to say to the contrary, by the Statute of Queen *Elizabeth*. There will be no means imaginable of preventing Popery, if that Doctrine pass, that Laws, &c. signify nothing to bind a Successor—Then give up the case without any more ado. It is not in your power alone to propose a Successor, without the Lords, &c. That encouragement which the Papists have had, has been from the Duke of *York*: No man can say the contrary. The Plot for introducing Popery, and all the consequences, &c. had its rise from that unfortunate Prince's declaring himself of another Religion.

Lord *Russel*.] I think we are but trifling hitherto. What the Gentleman said that spoke last, comes home to the point. It is high time to take consideration of this. If we do not something relating to the Succession, we must resolve, when we have a Prince of the Popish Religion, to be Papists, or burn. And I will do neither. We see now, by what is done under a Protestant Prince, what will be done under a Popish. This is the deciding day betwixt both Religions. I am transported, I confess, both with spiritual and temporal concerns. I have Abbey-Lands, but I protest before God and man, I could not be more against Popery than I am, had I none. I despise

pise such a ridiculous and nonsensical Religion—A piece of wafer, broken betwixt a Priest's fingers, to be our Saviour! And what becomes of it when eaten, and taken down, you know. The King, I believe, will do his part in this matter, if we do ours. In the last Parliament, I moved something of this nature, which was not a House to do great things; but I hope this House will neither be bribed, corrupted, nor cajoled, nor feasted, into the giving up the grand concerns of our Religion and property. Therefore I desire, "That a Committee may be appointed to draw up a Bill to secure our Religion and Properties in case of a Popish Successor."

Sir *John Trevor*.] It has been moved by this Noble Lord, "That a Committee may be appointed, &c." As to limiting the Succession, it is no new thing. In *Hen. IV's*, *Hen. VI's*, and *Hen. VII's* time, it was done, and Laws are now in force made by some of them, though Usurpers. And from those I collect, why should it not be Law under a lawful Prince? The intail of the Crown was in *Hen. VIII's* time, after his divorce, first from Queen *Catharine*, &c. and there was a necessity for him to make that Law, for had he not made it, and disposed of the Crown to his issue by *Anne Bullen*, and had not *Hen. VIII.* had that power, you would never have had the Protestant Religion in *England*; the Crown would have descended upon Queen *Mary*; for Queen *Elizabeth* was disabled from succeeding to the Crown by particular Act of Parliament, as Daughter to *Anne Bullen*. I conclude that it is in Parliament to regulate the Succession of the Crown of *England* at any time, without limitation, especially when the Law of God and Religion are concerned, and no Civilian can say a word against it. As to the nomination of the Officers of the Militia and Navy, &c. moved by *Cust*, it has been denied by the King to be done in Parliament; but this has been done; the Parliament Lords and Commons have desired the King to name them in Parliament, to know whether they may be trusted or no. The King's eyes are closed; he knows nothing of the danger we are in, and the Commons have had always the liberty

liberty to tell the King, that persons near him, that are entrusted by him, are false to him, and Traytors; and how should the King know it else? I therefore move, "That the Officers of the Navy and Militia, &c. may be by the King told in Parliament, that they may advise and inform him, whether they be faithful and fit to be trusted, or not."

[*Sir Henry Capel.*] You have been told, "That the consideration of this day is of the greatest moment that ever was to this Nation." This Session of Parliament must quiet the minds of the people, as to their fears of Popery and the Succession, &c. or never. In *Queen Elizabeth's* time there were conspiracies against her, when *Mary Queen of Scots* was taken off. In *King James's* time, the Gunpowder-Treason. In the last King's time, a horrid Rebellion, that ended in his murder; but here the Crown is under such a character as is more dangerous than all those; and from Popery came the notion of a standing Army and arbitrary power. At *Oxford*, when the Scholars cannot convince one another by argument, they throw loaves at one another's heads—Formerly the Crown of *Spain*, and now *France*, supports this root of Popery amongst us; but lay Popery flat, and there's an end of arbitrary Government and Power. It is a meer chimæra, or notion, without Popery;—and you have a good authority to put the Question moved, &c. Here was a Proviso, the last Parliament, to exempt the Duke of *York* from the Tests to be taken in the Lords House, &c. I was against it, for I would not publish to the World that the Duke was a Papist. I is a Law now, and I can say nothing against it; but I wish it be ever the better for him, or us. But now I would pass this Vote, "That the Papists have had all their encouragement from the Duke's being a Papist."

[*Mr Sacheverell.*] I am for part of the Question, but not for the whole. I am not of opinion "That the Duke of *York* has been the sole cause of the insolence of the Papists." There have been other causes.

[*Mr Garroway.*] I would not lay the cause solely upon

the Duke, but "That he has been a great cause, &c." This will reconcile the thing.

Mr *Swynfin*.] The Duke of *York*'s being a Papist has given encouragement to the whole Popish party, for their attempts against the life of the King, and the Protestant Religion. I move to have the Question so altered.

Colonel *Titus*.] If you say "That the Duke has given encouragement, &c." who knows not that? Never put that into a Vote—If the major part of the House does know that he is the sole cause, &c. I hope they will vote it. We know that the Duke has been the cause, but not the greatest encouragement to Popery, &c.

Mr *Swynfin*.] The Council of the King has failed him in the discovery of this horrible Plot. The body of the Bishops have failed him too. There are, by the informations, three hundred and sixty *Jesuits* in *England*. They have their several Provinces and Dioceses; within the Dioceses of the Bishops, they hold Synods; and all this has gone under the Bishops noses; and I wonder that, in their Visitations, not one of them should be found out, nor at the Assizes, nor Sessions. Thus has this Plot grown up. It now lies upon you; if you give it up, all is gone here, and throughout all the World too. Both *Coleman's* Letters are gone all the World over, for the extirpation of heresy, &c. and no sort of Religion can condemn you for taking care of your own Religion. You will else be scorned. If you rise to day, and do nothing, you will deceive both the Papists and Protestants; and I would do neither. There is no going about to prove this encouragement of the Duke's, &c. All the World knows it; but I must say, though there have been many Motions made, I concur in this Question, "That the Duke, being a Papist, has given encouragement to Popery, and the Plot."

Mr *Hampden*.] I shall humbly propose, that this may be the Question, viz. "That the Duke of *York* being a Papist, and the hopes of his coming such to the Crown, have given the greatest countenance and encouragement to the

the present conspiracies and designs of the Papists against the King, and the Protestant Religion."

Which Question passed *Nemine contradicente*; and the Lords concurrence was desired to it*.

Mr *Colt*.] If the Duke be found to have had a hand in the Conspiracy, I know no reason, but that the Duke may be impeached, though absent; and then there is a good ground for a Bill to provide for a Protestant Successor.

Mr Secretary *Coventry*.] I have lately taken the Oath of Allegiance to the King and his Successors, which implied the Duke of *York*; but I would have that Statute read, to show our Country, that we are not so nicely bound up by this Oath, as it seems to me we are.

The Statute of 30 Queen *Elizabeth* was read. The substance of which was as follows: "If any person hold, affirm, or maintain, "That the Queen, by authority of Parliament, is not able to limit and bound the Succession of the Crown, and that what Law, or Laws, shall be made by the authority of Parliament, is not, are not, and shall not be of sufficient force, &c. in possession, or remainder," shall be judged a Traytor, and every person so holding shall forfeit, &c."

Sir *Thomas Player*.] I am now convinced, that I am not so near damnation as Mr Secretary *Coventry* has told you, and that we are sound Protestants in what we do. But you will find it absolutely necessary to alter the Oath in the Militia Act, about taking up arms against such as are commissioned by the King, &c. Under this King we are not under any temptation to break that Oath. I believe nobody will plunder me, or cut my throat. A Popish Successor may send Popish Guards, and we shall not have the honour of ancient Martyrdom in flames, but die like dogs, and have our throats cut; and I must not take up arms to defend myself against such rogues. Considering how near we are to that danger,

* Mr *Sidney* says, "That the Lords gave their consent to it, with the addition of the word "unwillingly;" that is to say, "that the Duke, being a Papist, had made him unwillingly the occasion of the Plot."

let us do something speedily, that we poor Protestants may be secured from Popish Successors.

Mr *Trenchard*.] The matter of a Bill, upon the whole Debate, is more easily justified, than the manner contrived. I move, "That you will appoint a day for the Letters relating in this point to the Duke of *York* to be brought to you."

Sir *John Trevor*.] The Letters are from the Cardinal of *Norfolk* and Father *Anderton*, from *Rome*, which relate to the Duke of *York*. The Committee of Secrecy has no use to make of those Letters, for Evidence against the Lords in the *Tower*, but to show how the Plot has been carried on at *Rome*. There is another Packet of Letters of the Earl of *Berkshire's* on the same subject, which were never yet read in the House.

Ordered, That the Committee of Secrecy do bring the Papers of writing in their Custody, and report the effect of those which relate to the Duke's being concerned in the Plot.

[The farther Debate was adjourned to *Wednesday*.]

Monday, April 28.

Sir *Francis Winnington* reports the manner of the Earl of *Danby's* obtaining, and the passing of his Pardon, as before; and farther, that the time allowed the Committee was so short, that they cannot discover the Advisers, or Procurers, of the Pardon, but they have some light of it.

Mr *Bennet*.] I believe it will not be found in Law-Books, that a Pardon has been obtained in this manner, or that the Lord Chancellor ever parted with the Seal, as you have heard it reported.

Serjeant *Ellis*.] The Question is, Whether this Plea of Lord *Danby's* Pardon be a good Plea, and the manner of obtaining it? The regular way of Pardons is by the Attorney General, and the Solicitor General, &c. They are men of the Law, and might stop it in their Office, and the rest of the Offices, &c. It is the duty of the Lord Chancellor's place, if he thought this not a good Pardon, to have informed the King of it. But to pass by all this, the Question before you is, Whether this be a good Pardon to hinder your Impeachment. I confess, I am of opinion,

opinion, that the Pardon itself is not legal; it is a void Pardon, and if you demur upon it, I hope the Lords will give Judgment. If this Plea be over-ruled by the Lords, you can never have justice against him, &c. This is as cunningly as ever was done—*captare vulgus*—His Counsel knows we can take no issue upon this; he has not done dutifully to the King; for the Commons cannot vindicate the King's honour; for no issue can be joined upon this Plea. I therefore would join in the Demurrer, and expect the issue of this Pardon, and it is most proper to go to the Lords to join in Demurrer, that this is no legal Pardon.

Sir John Trevor.] The Question is now this single point, Whether this Pardon of the Earl of *Danby* be a good and legal Pardon, or no? I will not contest the point with Serjeant *Ellis*, whether this be a good Pardon, or not. I protest before God, I am no advocate for Lord *Danby*; but by the fair interpretation of the House, I will open that part of the Pardon to you. I humbly conceive, that in those two Precedents I vouched to the House the other day*, I dealt fairly. One Precedent was 50 E. III. in Lord *Latimer's* case. The other, of *Richard Lyons*, Merchant, was in the 1st R. II. The Precedent I cited of Lord *Latimer* was contrary to the opinion of the Committee. *Latimer* was impeached of High Treason, and one or two more; the rest were of Misdemeanor. First, he gathered the King's Impositions in *Britany*, and gave him no account of them. Then he delivered up the fort of *St. Saviour*. The last offence was, that he encroached upon Regal Power, and let go several felons, and other prisoners, without the King's Order. *Latimer* pretends, "He does acknowledge 2000 marks due to the King, and submits to the King's grace and favour, and that he cannot pay the 2000 marks without selling his lands." To all the rest he gives answer—And whereas *Latimer* confessed the matter, and produced no Pardon from the King, he was condemned, but no *quietus* to *Latimer*. The Parliament ended, then the King gives him his Pardon, not only for the 2000 marks—

* See p. 136.

He confesses all, offering the King 20,000*l.* and the King pardons all the Impeachment. The thing is, the Impeachment was impending, and here is a Pardon granted, but if the rest of the Impeachment fell by the dissolution of the Parliament, then all that I have said signifies nothing.

Serjeant *Ellis.*] In the Pardons of *Lyons* and *Latimer*, it is plain that the King recites the Judgment given by Parliament in their Pardon, and the King pardons what belonged to him, which the King is so interested in, that he may dispose of it how he pleases, and the King gave *Latimer* his lands, as if no Impeachment had ever been (though there was something that might import Treason in the Impeachment, though not by the Stat. of 25 *Edw.* III.) So the Lords put a fine upon him of 20,000 marks; and after that the King pardoned all that belonged to him, which the King may dispose of to whom he will; to the party, if he pleases. I will not say there are no Precedents of Pardon, &c. but the King never pardoned, till some Judgment or Resolution was given of the offence in Parliament. But to pardon before Tryal, when the King knows not what fact he is to pardon, is a dangerous Precedent. A man may destroy the Nation, if so, and do what he will. This is a thing of a strange nature. The King cannot pardon a man, an Impeachment depending.

Sir *Francis Winnington.*] This does not only concern a particular man, but the Government of *England*. What you debate is not conclusive either to the Commons or Lord *Danby*, but only methods to discharge our duty to the King, and those that sent us hither. As to Precedents of the manner and means of obtaining this Pardon, no man can pretend any Precedent. *Danby* thought the illegality of the Pardon so great, that the Officers, through whose hands it must go, would not pass it, and therefore took this course. But we must cut off the particles of the manner of obtaining it. I am of opinion to demur to this Plea of his Pardon, for it was never practised, and *Trevor's* two Precedents are not to this case. A Pardon granted "for all Offences to the 27th of *February*," which

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is three months after the Impeachment was exhibited, and the crimes, &c. perpetrated. State this fact only, and see what a condition we are in, if this be a good Pardon. As to the case of *Latimer* and *Lyons*, *Trevor* agrees that the facts they were impeached of were confessed by the Parties; and *Latimer* "submits himself to the Grace and Favour of the King, but by special prayer, not to put him to his fine, for he must sell his lands." What is the meaning of Impeachment in Parliament? Because great men commit great exorbitances; and when the fact is proved by the Commons, or the Party confesses, &c. that is all the Commons can do, and the Lords give Judgment thereupon, and if the Party be reduced to Judgment, a right of his Forfeiture accrues to the King, and all is vested in the King, and the King may pardon his part. I conceive, without all scruple, that the Commons right is to have Justice by Tryal. As for the Fine of 2000 marks, in Lord *Latimer's* Judgment, that came to the King's Coffers, and the King might pardon it. In the case of an Appeal of Murder, the King loses a subject, and enquiry is made how he came by his death, &c. The Wife and Heirs of the Party, &c. have their vengeance, and the King cannot pardon, &c. He cannot hinder execution of the Party; and no man can deny it. When an Impeachment is by the Commons against a great man, they are aggrieved, and they must have Justice. An Impeachment is to no purpose when a Pardon shall stop our mouths—And there is no end to the oppressions of all great men, who are too big for inferior Courts to deal with. The Committee does distinguish Pardons, where Impeachments are depending, and where not. We have proved our case, and a Pardon is clapped upon you. I would argue it at the Lords Bar, and I hope the Lords will not give Judgment in this case, &c. to be a good Pardon. I only mention this, to show that is not a point to give up. No great man was ever so stout yet, as to get a Pardon when his Impeachment was depending. The late Duke of *Buckingham*, though he had a Pardon, durst never bring it to light during his Impeachment.

ment. Certainly this experiment might have been found out, had it been legal, in five hundred years. We are not to give up this point. Now the Country has entrusted us, let us do the best we can for them.

Sir *John Trevor*.] I say, a person impeached may deny one crime, and confess another. Lord *Latimer* was impeached, and one of the crimes he was charged with he did acknowledge, before they proceeded to the rest. There is no relative expression in Lord *Latimer's* Pardon—*Quoad nos pertinet*—The King cannot restore what he has already given away—The 2000 marks were laid on *Latimer* as a Fine; the 20,000 marks was his submission to the King. That Impeachment was subsisting after the Parliament, and this of Lord *Danby* is a Pardon, &c. pending the Impeachment.

Mr *Powle*.] I confess I am unprepared to speak to this matter. I find the case of Lord *Latimer* urged, which was an Impeachment of 50 *Edw. III.* and sentenced then, &c. But that in the case is not yet taken notice of, that in 51 *Edw. III.* the Parliament reversed all those Judgments, and a particular Petition of the Commons complains, "that Lord *Latimer* was unduly impeached, and desires he may be restored *in integro*." Historians tell us of some extraordinary power in calling that Parliament, by the Duke of *Lancaster*, the King's Son. Sir *John Peachy* and *Lyons* particularly petitioned that they might be restored. Others, in 11 *Rich. II.*—A great number of Persons were appealed by particular Lords, and some by the Commons. The Judges were all impeached for giving Judgment against a Judgment of Parliament, and were banished to *Ireland*. Sir *Robert Belknap* and several others were not restored but by Act of Parliament—11 *Rich. II.* *Squire* attainted, restored 16 *Rich. II.* Another thing 19 *Hen. IV.* little different. In the *Revolutions of York and Lancaster* there were few Impeachments, but by Bills of Attainder—Little difference, being the assent of the whole Body. There was a power lodged in the King that he might pardon, &c. notwithstanding there was no Parliament, &c. A great instance that the King could not do it without

without Parliament. Lord *Bacon* was fined for Misdemeanor; the King pardoned the Fine, but for the Judgment of his disability for Offices, he never pardoned. The Duke of *Buckingham* concludes his Answer, "That what he did was before the 21st of King *James*, and claims that general Pardon, and the Coronation Pardon of King *Charles*, and he had taken a Pardon, according to that Grace of the King, to the 21st of *February* last Parliament." The Duke thought it the better way to dissolve that Parliament, than to plead his Pardon. I think it not convenient to take Lord *Danby* upon the first advantage of this first proposal, but peremptorily, if he insist upon his Pardon, judgment must go against him. For my share, I would unwillingly insist upon it at the Lords Bar.

Serjeant *Maynard*.] People abroad know not what is Plea, and what is not Plea; but it lies all upon the King. The Plea is not yet entered, &c. and Lord *Danby* may withdraw it. As things now stand, I would advise to apply yourselves to the Lords, to know whether *Danby* will stand to this Plea. If criminal, and that Plea be found against him, he is gone; but in Parliament he should not be taken with a Why not. I desire you would go only on the crime, and not on point of Law.

Lord *Cavendish*.] The sense of the House is to demur to the Pardon. If *Danby* insist, &c. then to try the validity of it. The Lord Chancellor said, "he intended to make use of it, if false witnesses should arise against him." He cannot know false witnesses before he comes to Tryal. I would desire the Lords to demand of *Danby*, whether he will insist upon his Pardon, or his Plea.

Resolved, That a Message be sent to the Lords, to desire their Lordships to demand of the Earl of *Danby*, whether he will rely upon and abide by the Plea, or his Pardon.

Tuesday, April 29.

[Mr Speaker acquaints the House, That his Majesty was pleased yesterday to return the Answer following to the Address for executing *Pickering*, and other Popish Priests*, &c.

* This was the very day that farther consideration of the danger apprehended from the Duke's pretensions were to resume the

"I have always been tender in matters of blood, which my subjects have no reason to take exception at. But this is a matter of great weight. I shall therefore consider of it, and return you an Answer."]

Wednesday, April 30.

[The King sent for the House to attend him in the House of Peers, where his Majesty spoke as follows:

"*My Lords, and Gentlemen,*

"The season of the year advancing so fast, I thought it necessary to put you in mind of three particulars:

"1. The Prosecution of the Plot.

"2. Disbanding of the Army.

"3. Providing a Fleet for our common security.

"And to show you, that, whilst you are doing your parts, my thoughts have not been misemployed, but that it is my constant care to do every thing that may preserve your Religion, and secure it for the future in all events, I have commanded my Lord Chancellor to mention several particulars, which I hope will be an evidence, that in all things that concern the public security, I shall not follow your zeal, but lead it."

These memorable particulars were thus expressed by the Lord Chancellor. "And to the end it may never be in the power of any Papist, if the Crown descend upon him, to make any change either in Church or State, I am commanded to tell you, that his Majesty is willing that provision may be made, first to distinguish a Papist from a Protestant Successor, then to limit and circumscribe the authority of a Popish Successor, in these cases following, that he may be disabled to do any harm. First, in reference to the Church, his Majesty is content, that care be taken, that all Ecclesiastical Benefices and Promotions in the gift of the Crown may be conferred in such a manner, that we may be sure the Incumbents shall be always of the most pious and learned Protestants, and that no Popish Successor, while he continues so, may have any power to controul such Presentments. In reference to the State, and Civil Part of the Government, as it is already provided that no Papist can sit in either House of Parliament, so the King is pleased that it be provided too, that there may never want a Parliament, when the King shall happen to die, but that the Parliament then in being may continue indissoluble for a competent time; or if there be no Parliament in being, then the

pretensions, &c. and the Lords to them on *Sunday*, for their concurrence to discuss the Vote sent up *currency*. See p. 151.

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last Parliament which was in being before that time, may re-assemble, and sit a competent time, without any new Summons or Elections. And as no Papist can by Law hold any Place of Trust, so the King is content that it may be farther provided, that no Lords or others of the Privy Council, no Judges of the Common Law, or in Chancery, shall at any time, during the Reign of a Popish Successor, be put in, or displaced, but by the Authority of Parliament: And that care be taken, that none but sincere Protestants may be Justices of the Peace. In reference to the Military Part, the King is willing that no Lord-Lieutenant, or Deputy Lieutenant, and no Officer in the Navy, during the Reign of any Popish Successor, be put out, or removed, but either by the Authority of Parliament, or of such Persons as the Parliament shall entrust with such Authority.

"It is hard to invent another restraint to be put upon a Popish Successor, considering how much the Revenue of the Succession will depend upon the consent of Parliament, and how impossible it is to raise Money without such Consent: But yet if any thing else can occur to the wisdom of the Parliament, which may farther secure Religion and Liberty against a Popish Successor, without defeating the Right of Succession itself, his Majesty will most readily consent to it *."] "

Debate.

Mr *Bennet*.] I am glad to see how far the King will come to us. First, I would give the King Thanks, &c. and then secure the Protestant Religion in this King's time, and for the time to come, and do no other business whatsoever.

Which was seconded by Sir Francis Russell.

Mr *Sacheverell*.] If you take the Chancellor's Speech to be the King's, I will take the liberty to speak to it. But, under favour, the Speech will not do your work, and we cannot, in my opinion, give Thanks for it, as the main step in it overthrows all the rest, barely upon the case of a Popish Successor, so that you have no security for Religion, till you find out a Popish King, and then I say that what is offered will not do your work. I am far from

* *Burnet* affirms, "That the Duke was struck with the news of the King's concessions, when it reached him at *Brussels*, and that he (the Bishop) saw a Letter written by the Dutchess the next Post, in

which she wrote, "That as for all the high things that were said by their enemies, they looked for them, but that Speech of the Lord Chancellor's was a surprize, and a great mortification to them."

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altering the Succession. Let the King and Council be as Popish as they will (and I believe some of the Council are so) yet I would take security that they shall do no hurt. This Speech is merely to delude the people with security, when there is none. When a Popish King comes to reign, all those proposals shall be done—But you have no Law; and you do nothing, unless that Popish King will assent to your Laws—This is a fair nothing. We are not to invade the King's right, as we desire to enjoy our own, and then we are not to touch the King's family in the Succession more than we would touch one another. Now for Succession; if a Popish King comes in, or one that will overthrow the Protestant Religion, you cannot do any thing in that without providing that no standing Army shall be, to raise Money, &c. - As to the Revenue, which ends with the King, &c. I have seen the computation of Mr *Coleman*, "how the King might live without a Parliament;" another Paper, in the introduction, "how the King must be arbitrary, and have a standing Army in masquerade in the Fleet." When the two Lords of *Buckingham* and *Arlington* were accused here about the *Dutch War*, when they had made it, they put off the Parliament, and prorogued it. *Arlington's* Answer was plain; "By the credit you had given the Exchequer, they could go on with the *Dutch War* without you." Then he was asked, why were we called in *February* after? He answered, "There was no more Money left, and so they were forced to call the Parliament." Now look back, and see whether you are in any security, as the state of the Nation stands. I would comply with the King, but without ruining the people. Unless we can wind the King to a good will and liking of what we shall do, all will be to no purpose; therefore I would show the King that we have no design to ruin him, or his family, but to save the Nation. Consider whether, as the Law stands, made by the last Parliament (of the Militia Oath) if the King will not relieve us, whether it is possible to be saved. The Papists practice has been, either through insinuation of some particular Person, or corruptions, the last Parliament, of Members,
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(and I hope in time we shall know them) and which you may hear of ere long. The Protestants are a great party; they will never lose their Religion. Now consider, how stand you? Which way has the last Parliament put it? To say the King is a Papist, that is penal; and then there is a perpetual Clause in the Act of Uniformity and the Militia Oath, of taking up Arms against persons commissioned by the King—Will not you take this time to tell the King, that you mean well to the Royal Family, but would secure your Religion and Property? Therefore I move for a day, &c. to consider what will secure you; and that a standing Army will not do; for who can believe there is good will, &c. when there is an Army to support the Government? It is talked, that the subjects here are factious; of the *Scotch* Faction. All that brand the people with rebellious and mutinous inclinations, those advise the King to take up his Prerogative. He that puts these things into the King's mind, is against his interest—The People cannot hurt the Crown. Where is that thing that must save the Nation? The foundation of the Government is the People's hearts, and upon the same foundation the King came in at his Return; retrieve it to that day, and the Papists can never do you any hurt.

Sir *Thomas Meres*.] In the King's Speech, &c. there is a provoking us to secure ourselves. "If any thing whatsoever be for your good, or for your quiet, so as you do not impede the Succession, &c." If this be not fit for us to give Thanks for, in a Body of Lords and Commons, nothing can be. Thanks being moved, it is ungrateful for us not to do it.

Sir *Henry Goodrick*.] I rise up to speak to some words I have noted down. *Sackeverell* made an elaborate discourse fully to many weighty things. The Question was, "Whether Thanks should be returned to his Majesty for his gracious Speech?" which I thought would have passed without any opposition, and not with words of reflection. The words are these, "This is but to delude the eyes of those who are apt to be misled."

Serjeant *Maynard.*] What was said by *Sacheverell* was with good zeal to King and Country. The effect of what the King said, was, "Do what you can, what you will, to secure Religion in the Succession, &c. only one thing reserved, viz. "Not to alter the Succession in the right Line." No man can say, he is able to propound what is fit to be done; but I believe it is one of the most gracious condescensions that ever was; and I would thank God for it, and show your gratitude to the King, and enter it into your Books.

Sir *Thomas Littleton.*] *Sacheverell* said nothing but what was reasonable and proper for us to do at this time. Gentlemen will find great mistakes in the Chancellor's Speech. First, it must be stated, that he is a Popish Prince. We have a Prince at present, and who can say he is a Papist? No man can legally and properly say it. If a Test be given him, who shall execute the discrimination upon the King? And if that be a necessary condition, the whole thing is ineffectual. If a Prince will say, "I am no longer a Papist," and will go to Church, and have a Dispensation from the Pope to do it, there is an end of it; if so, the latter Clause of the Chancellor's Speech will not help you at all—But this of Succession, &c. in the Speech, must stand, and you can do nothing farther that can help you. In the last Parliament, there was a Motion, "When any Speech of the King's is reported, &c. that we come to no Vote, unless to adjourn the consideration of it to another day;" and not the same day debated, for there may be inconveniences in it. If there be an Answer to your demand, then it may be, &c. but if there be new matter in it unforeseen, and we give Thanks for it, we may thank the King for we know not what. Therefore I move to put off the consideration of it to another day.

Mr *Williams.*] What Councils have done, they may do. This may tend to a Precedent for the future. I would return his Majesty Thanks for the gracious Expressions in his Speech, and no more.

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Mr *Garroway*.] I have been here at many of these Debates, and I am sorry you should have a Question whether to give the King Thanks. As to what is said by the Chancellor, the King has not so ordered him, as that he cannot alter any thing, &c. for I have heard the Chancellor say one thing in the Lords House, and he has printed another. I am willing the King should know how we receive any gracious Expression of his. We saw, upon pressures, when we were harder borne than now, that it was always thought convenient to set a day, &c. and have sudden Thanks, upon a general Motion. The Chancellor's Speech, for ought I know, is a thing of his own. That negation of altering the Succession is a kind of chiding us for *Sunday's* work. If we do not something, we are not upon an equal footing with the Papists. I look upon those things as diversions for putting us off from serious thoughts, as we have been served before. I would set a day, &c.

Mr Secretary *Coventry*.] The Arguments are not well founded against the Chancellor's Speech, or Thanks to his Majesty for his gracious Speech. It is not like a Bill sent down; it is unformed, and as you are to give the form, the King's inclinations surely are worth your Thanks. The King tells you what he would propose, not what you shall propose; what he can concur with, and what not. What if a Popish Prince will break all Laws? Human reason can go no farther than human reason can. I can never believe that a Prince, come to the Crown so clogged with prejudice against Popery, can ever set it up. It is left to you to make Tests and Oaths to bar it. It is left to you to form, &c. and what other things you can think of. If you go without a Question of Thanks, it will be very disadvantageous to you.

Mr *Vaughan*.] *Primâ facie* the Speech, &c. has all Grace imaginable, but we ought not to give sudden Thanks, any more than make a sudden Law. If the Crown of *England* hurts our Liberty, it sinks, and I question not, but if the King be too bountiful in his concessions, that very bounty may hurt us. A great many

Graces may deserve your Thanks in due time; but how qualified, I would have well considered.

Colonel *Titus*.] I would give Thanks for something more than the gracious Expressions in the King's Speech. That is, that the King will make good what he has told us. The last Parliament was as liberal in Thanks as in Money: I hope we shall not imitate them. I would use the King, as we use God Almighty; we give Thanks for fair weather and rain, but we give no Thanks for clouds—Rain must fall first, clouds may blow over; the rain may be prorogued, and perhaps we may give Thanks for nothing. By *Monday*, possibly, Bills may be passed, and by that time I hope we shall have reason to give double Thanks.

Resolved, That the consideration of his Majesty's Speech, and the Lord Chancellor's Speech, be adjourned till *Monday* next.

Thursday, May 1.

Sir *Thomas Exton* reports from the Committee, to whom the Consideration of Doctor *Nelson's* Petition was referred, "That they are of Opinion that the said Doctor *Nelson* be discharged from his confinement, and be put out of the Commission of the Peace."—He was committed *April* the tenth, at a Noble a day fees.

Colonel *Titus*.] We cannot give too great discouragement to the Clergy, who meddle with your Liberties, things they do not understand. It is the business of the Clergy to preach *Christ, and him crucified*. I do not believe he wrote the Book for an exercitation barely, but in hopes of a good living. I would have him find sureties for his good behaviour, and so be discharged, paying his Fees, since he has lain in the Serjeant's hands. But for his former life, to have that ripped up, it is not for your honour. I would have him put out of the Commission of the Peace—He thinks himself sufficiently punished.

Colonel *Birch*.] If for but a small offence a man must be brought to the Bar upon his knees, much more for so great an offence as writing such a Book, &c. Yet I am never against your mercy; but I would have his discharge

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as notorious as his crimes, and brought to the Bar. No person in custody but what must be so discharged.

Sir *John Trevor*.] If you bring this man upon his knees to the Bar, you have, in effect, all the Clergy of *England* upon their knees, &c.

Sir *Robert Carr*.] You were told that, upon Breach of Privilege for arresting a Member's servant, the party is brought upon his knees at the Bar. This is another sort of crime. You punish this Doctor, not for Breach of Privilege, but for a thing of another nature. This is a kind of Judgment, and you may make steps too far in it, and you have dismissed persons in the like case, without coming to the Bar; especially when you let the Printer escape.

Colonel *Birch*.] One part of this Doctor's Letter is of a Gentleman called *Montagu*, &c. who is of the House, and I think that is a Breach of Privilege. That fully answers *Carr*, &c.

Sir *Thomas Clarges*.] For any Person to arraign your Member, or what you are concerned in here, is a Breach of Privilege. Doctor *Maynwaring* had a form of words to subscribe at the Bar upon his knees, for the like offence. Doctor *Nelson*'s Letter has marked out several letters of names, and I believe my name is one. *Maynwaring* was afterwards promoted to a Bishoprick, and it may be this man may be promoted also.

Mr *Seymour*.] It is not usually known, that a Debate of this nature should take up so much time, when you have given Judgment upon him already, by committing him to the Serjeant. Coming to the Bar upon the knees is never dispensed with on such an occasion, unless the party have some extraordinary merit to recommend him to your favour. It was never well for this House, since you have been so much Courtiers, as to be complimented out of your right; you reproach yourselves in not doing it. This Doctor is not so great, nor you so little, but that you ought to bring him upon his knees.

A Motion was made, "That the Chancellor be desired to turn him out of the Commission of the Peace."

To which one said,] The Chancellor has no power to turn any man out of the Commission of the Peace, nor put in any. He has turned out and put in too many already. He has no authority to do it; it is the King; and I desire the King may be moved to command the Chancellor to turn Doctor *Nelson* out of the Commission of the Peace.

Colonel *Titus.*] If the Chancellor have such an extravagant power, I hope the King will have a new Chancellor. We know what sort of men have been turned out and put in. I know not that the Chancellor has any such power, but I would not have the House of Commons own any such power.

Mr *Powle.*] The Statute of *Hen. V.* gives the power of nomination of Justices of Peace to the King's Council. In that of *Hen. VI.*, there is power given to the Chancellor, of his own authority, to put out men for insufficiency, or that are not men of Law sufficient to carry on the Justice of the Nation; but by appointment of the King's Council, they are to be put in. I would therefore address the King about it. I hear the King has thoughts of a review of the Commissions of the Peace of all *England*, to alter the Commissions, and put in men fit.

Sir *John Trevor.*] I was one of those that attended the Chancellor about putting Mr *Milborn* out of Commission; we did not desire him to turn Mr *Milborn* out, but Mr *Arnold* was turned out; and we went to enquire who it was turned him out, and then resolved to go another way; for it was in vain to go to the Chancellor, when *Arnold* was turned out by so high a hand as the Duke of *York*.

Mr *Bennet.*] I would not only address the King for this man, but all, that we may have such as will act protestantly, and not popishly.

Sir *Trevor Williams.*] This Gentleman was turned out without one Article against him, and a Popish Justice put in.

Sir *John Trevor.*] After a long discourse with the Chancellor,

Chancellor, he said, very mildly, "That Mr *Milborn* should be turned out of Commission."

Ordered, That an humble Address be presented to his Majesty, by the Members of the Privy Council, to desire his Majesty to command the Lord Chancellor to put Doctor *John Nelson* out of the Commission of the Peace.

Friday, May 2.

Doctor *Nelson* was brought to the Bar, and there kneeling,

The Speaker said,] You are justly under the displeasure of the House, for meddling out of your sphere, and you are more to blame for meddling out of your calling, in personating a *Jesuit* in the Book you have written. What you have done was beneath the gravity of your profession, and a desertion of your calling; but the House presuming that this will be a warning not to do the like offence again, and rather desiring your reformation than your ruin, they do discharge you, and you are discharged, paying your Fees.

Saturday, May 3. In the Afternoon.

A Message from the Lords, by Mr Justice *Atkins*, and Mr Justice *Jones*, viz. That the Earl of *Danby*, being this day brought to the Bar, made the Answer following, by word of mouth only, viz. "The Plea, which I have put in, was put in by the advice of my Counsel; and my Counsel tells me, that my Pardon is a good Pardon in Law; and advises me to insist upon my Plea put in: Which I now do; and I desire that my Counsel may be heard, to make out the validity of my Pardon*."

[Debate.]

Sir *John Knight*.] This Pardon of the Earl of *Danby*, for the Articles he confesses, will have no effect before

* The Man of the Law, that the Earl of *Danby* depended most upon, was *Pollexfen*, an honest and learned, but perplexed Lawyer. He advised him positively to stand upon his Pardon. It was a point of Prerogative never yet judged against the Crown, so he might, in that case, depend upon the House of Lords, and on the King's in-

terest there. It might, perhaps, produce some Act against all Pardons for the future; but he thought he was secure in his Pardon. It was both wiser and more honourable for the King, as well as himself, to stand on this, than to enter into the matter of the Letters, which would occasion many indecent reflections. *Burnet*.

his Tryal, bringing in Popery, to be an opportunity to subvert the Government of the Nation—The five Lords may have the same Pardons; but I hope God will bless us from this Pardon, which does no less than pardon all those crimes he stands accused of. I know nothing of Law but self-preservation: I would therefore move, seeing there is such a Pardon, to bring in a Bill of Attainder against him. He renders himself, and is no Traytor, for he pleads his Pardon. Lay your hand upon your heart, and consider that *Danby* is a bucket to the ocean in comparison of the safety of the Nation, and let us do as we ought to do.

Mr *Williams*.] The Plea of the Earl of *Danby* is full of equivocation. This is a plain proposition, whether he will be concluded by his Pardon. It is a simple proposition, in opposition to a complex one, not by *Ambages* to answer; but will he abide by it? Will any man take this to be an Answer?" To speak like a Lawyer, a Schoolman, or a Country Gentleman. Will you be bound by it? A man that has not been truckling with a House of Commons, nor with *France*, nor the Nation—So long as he has been at the helm, he must know how to give a plain Answer. *Danby*, as he is a Nobleman, is not skilled in the Law. But when we find by his Answer, that it is by his Counsel; whether they be *Jesuits* of his Counsel, I know not, but I am sure no *Jesuit* can give a more equivocal Answer to a plain Question. I am not Parliament-man sufficient to propose what you shall do. Now, whether will you go to the Lords, &c. or lay your hand upon your own handle of *Fugam fecit*, and go by Bill of Attainder? One or the other you must do.

Sir *Francis Winnington*.] This great Lord has given you a great deal of trouble. Give me leave to state the case, how Lord *Danby* stands impeached the last Parliament, and continued in Office after the Prorogation and Dissolution of it; and in the last Parliament as well as this, he craved time to put in his Answer to his Impeachment, and to have recourse to his Papers for his Defence. After a month's time, he produced his Pardon,
and

and pleaded it. This Pardon is of more consequence than an hundred such single Lords. When it was pleaded, the Lords sent it down to you. You perused, read, and debated it, and then sent a Message to the Lords to know, "Whether Lord *Danby* would rely upon his Pardon for his Plea?" And so you left the case. *Danby* appears to-day, and says, "This Pardon is good in Law, and he is advised to insist upon it, &c." I humbly conceive, that there are several things in the Message that we must discourse of. *Danby* says, "that he will insist upon his Pardon, &c." "Insist" is such a parliamentary term as is not absolutely conclusive, but it is a vehement affirmation; but in plain *English* and common acceptation, he is not bound up by it. The cause is great, and the House is thin. The cause is great, because the Committee can find no Precedent of such a Pardon granted, pending an Impeachment. Next, absolutely, if it be sufferable in the Government of *England*, that a man impeached of Treason, which he tacitly confesses by pleading his Pardon, [should escape,] (and any man, if such Pardon be allowed, in a high station, may do so,) I put not that value on my birthright that in all my life I ever did. It is the constitution of the Government to have Impeachments against great Lords offenders, &c. and if this be stopped now, by this Pardon, farewell all; and they will still be established in their iniquity without redress. I propose therefore, that if this House be of opinion, that by this Message Lord *Danby* demurs upon this Plea, let the Commons see what the fate of their interest is. For his Counsel to be heard at the Lords Bar, this is a matter of great moment, if *Danby* intends to have his Counsel heard, and the Lords will say it is a good Plea—No man can say that the Commons ever pleaded against Counsel, &c. It does not become their grandeur to debate and advocate against any Gentleman of the Long Robe. That is without Precedent. I mention this, &c.—The Commons are concerned, and our Rights to us are as dear as *Danby's* Life is to him; and I move for *Monday* to consider of it.

Sir

Sir *Thomas Lee.*] I agree that we should not defer the consideration of this longer than necessity requires; but in the mean time, have the opinion of the Secret Committee. But what will you do, in case he drives you to the necessity of an Act of Parliament? The Pardon, if it be voided, must be judicially, or legislatively; but I would try the first, in the first place. Refer it, &c.

Mr *Paul Foley.*] I agree that you refer it, &c. till *Monday*. The Committee were of opinion that the House should join issue, that is, demur; which if you do, Lord *Danby* must be concluded by it, and he can put in no other Plea, unless cause be shown to the contrary why you should not join in Demurrer with *Danby*. In Lord *Strafford's* case, the Commons would not argue with his Counsel; so you refer that and the manner to the Committee, and you need not trouble the House farther.

Mr *Williams.*] When we first came, &c. there was a Debate whether you would prefer this Lord's Tryal before the five Lords. If you stay till you have a return from the Committee, *Danby* may be postponed to the five Lords. *Danby* has declared, "That he will be concluded by this Plea." But says the Party to the Demurrer, "I will not be bound by it." Says Justice *Atkins*, "The Plea was delivered by *Danby* by word of mouth, *ore tenus*, only, and no writing." First, you ought to be satisfied whether *Danby* will be bound by it, and be concluded by it; if not, you do a vain thing; else *Danby* will walk in a circle, and he will conjure still. Therefore I would make application to the Lords, &c.

Sir *Robert Howard.*] There is nothing before you applicable to any Debate, but the validity, or invalidity, of the Pardon; and I believe that may be now, without referring it to the Committee. In this case I would not lose a minute, and I would let the Lords know, that this Answer seems to be *ore tenus*, and may be denied again by the same mouth that said it. What advantages men propose to themselves by delay, may be great; therefore I would proceed upon what is clearly before you. He desires his Counsel may have leave to make it good; and
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it is as natural that his Counsel may desert the Plea again. Therefore I would send to the Lords, to know whether this be his Plea, and that it may come under his hand, (and it is a favour to him to know whether he will stand upon his Pardon, or any other Plea,) and know whether he will make a categorical Answer. If *Danby* will stand by his Tryal, I would know no more, and ask no more, but whether *Danby* will plead guilty, or not guilty?

Mr *Seymour*.] The Question is not now, "Whether the Pardon be good, or the Plea," but the Question is, "Whether this be a positive Answer, which he will rely upon?" I would not trouble you now, but that the Honour of the Nation and our Privileges are concerned when this is delayed, and he may have time to turn three Kingdoms into *Aceldama*—A little alteration of the words may alter the sense. But as we have his Answer, it is evasive and uncertain, and makes it part Plea, and part Pardon. This is so fallacious that we cannot join issue upon it. He asks of the Lords, "That he may have Counsel, &c." and that, as to matter of Law, is a just demand. But in what manner is he to have it, not to join with the Commons, but to inform the Lords in matter of Law, as to the Pardon, &c.? But you come not there to capitulate with the Counsel at the Lords Bar, who plead for their Fees. A *Jesuit* was asked, whether he was a *Jesuit*, or no? He said, "That is not a question to be answered, because it is not to be asked;" and it is not to be asked, because not to be answered. You are well advised to ask, "Whether directly he will rely upon his Plea, or his Pardon?"

Mr *Vaughan*.] Matter of Record must be your guide. If the Lords have recorded his Plea, then it is fit for you to go upon it. But if he insists upon his Pardon, and the Court says, "He does insist upon his Pardon," then he positively relies upon it, and insists. We shall never know what we have to do, till you send to the Lords.

Sir *Francis Winnington*.] I propose that he may be asked whether he will either stand by it, or wave it, for you see *Danby* will go no farther than he is driven. If

we carry our Demurrer to the Lords, then you will send to know whether he will join in Demurrer; so, if you please, the Gentlemen of the Long Robe, in a quarter of an hour, will draw it up. We have his Plea, and so may draw up the Demurrer, and send it up to the Lords, and stand to it.

Mr *Williams*.] If the Commons had a certain Rule, &c. your sense might go by it; but this is such an *Ignis fatuus* to follow—There is some cunning man in his practice, that has advised this, and he is laying a trap for you. It is the ordinary course in *Westminster-Hall*, upon a Pardon being pleaded, the Question is asked, “Whether he will insist upon it?” But now you are upon an Impeachment, and *Danby* has pleaded, and the Lords are Judges of all this. Therefore, I beseech you, walk warily; let him deal plainly with you, what he will do; if you are satisfied that he rests upon this Plea, I would say no farther. The Lords are Judges of their own methods; what is recording and not recording, they judge, and we cannot well examine, and must be bound by what they will say. The Lords were in doubt whether this Plea concluded him. The Lords tell you not whether he is concluded or not, by it, but only what he says *ore tenus*. Take the matter so before you, and you are in a safe way: Whether he is categorically concluded, and whether the Lords take this to be conclusive, if you take it that he is bound by it, then the Lords will tell you no such thing, and they will say hereafter that it is not conclusive; therefore send to the Lords to be satisfied. If the Lords say he is concluded, then you may safely proceed.

Sir *Thomas Meres*.] I take his Pardon to be his Plea, and his Plea to be his Pardon, and that you are at an end, and that he insists upon his Pardon.

Mr *Powle*.] I do not wonder that Lord *Danby* has taken this way, having so great a charge against him, and so little to answer in his own justification, that he has so proceeded. His Plea was put in five or six days ago. I was then of opinion that it was a good Plea. His Pardon being put into the Court, in Parchment, before which he is
to

to be judged, is a good Record, and the Lords only transmitted it to us. Say we, "we will not surprize him in it, and will not conclude him immediately." Only we, as an act of favour of Prosecutors, show the fairness of our Proceedings. He takes four or five days to advise, and now he says, he insists on his Pardon. I take it, that a Parliament is not tied up to those formalities, *modo et formâ*, that the other Courts of *Westminster* are. "To rely upon his Pardon," or "insist," there is no difference; they are of the same signification. I think this Plea is as far to conclude him as possible. If you send to the Lords, as is moved, he may give you one or two more evasive Answers. I would therefore send to the Lords to give a Rule of Court in it, and so proceed as if he were concluded by it.

Mr *Williams*.] See what a noose you are drawn in by Demurrer. You must be bound up by it, by the Judgment of the Lords, and it must be conclusive to the Commons of *England*. I lay the danger before you. If the Lords give Judgment against you upon Demurrer, you can proceed no farther. The Demurrer is plainly a confession of the fact, and as *Danby* must be tied up, so must you.

Sir *Thomas Littleton*.] I speak to Order. You have sent to the Lords to sit: I suppose about the Amendments of the *Habeas Corpus* Bill, and the Committee have perused the Clause that the Lords added, and passed it with some alteration, &c. and accordingly Sir *William Pulteney* reported it. See the *Journal*.

Mr *William Harbord*.] Before you have any conclusion from the Lords, I would bring in a Bill of Attainder against Lord *Danby*; for if you bring in a Bill, &c. after the Lords have over-ruled the Demurrer, they give themselves the lie if they pass it. The Lords, we know by experience, kept some Lords in the *Tower* the last year, for no more than disobedience to their Order, so close, that they were almost killed, and these Lords that are in for High Treason have their liberty to walk about.

about. Therefore I would not trust to the Justice of the Lords too much.

Mr *Williams*.] If Lord *Danby* be acquitted by Plea of Demurrer, it would be a saucy thing in us to bring in a Bill of Attainder. A man must be tryed for his life but one way, for the same offence, else it would be unjust.

Mr *Powle*.] It is a mistake, that if the Lords pass Judgment, Lord *Danby* is immediately acquitted. But we have an interest in that Judgment, modestly speaking. The Commons required farther Judgment from the Lords than that which they pronounced against Lord *Latimer* (the Precedent before recited.) When you argued that the Lords cannot give Judgment till the Commons come up to demand Judgment, in the case of Lord *Strafford*, the Commons, before they demanded Judgment of the Impeachment, brought up a Bill of Attainder against him, when the Lords had the whole matter before them—And that is much more liable to censure than what has been proposed.

Mr *Vaughan*.] A Pardon is *Liberatio a penâ*. But a man may have an action against him that calls him criminal, &c.

The farther consideration of this Debate was adjourned till *Monday*, the first business.

Monday, May 5.

The adjourned Debate resumed.

Sir *Thomas Player*.] The Law is too hard for me to speak to. I had not the honour to be bred to that Profession, but, with your leave, I shall offer what I have to say, and I hope the effect will be to raise our spirits. I remember that the Parliament has been always called, "A great, wise, and powerful Council." But if, by Pleas and Demurrers, Over-rulings and Attainders, the Earl of *Danby* be let slip through your fingers, and he become a great and a free man, then I am apt to believe we shall be thought, "a weak, a childish, and a foolish Council." If *Danby* put himself upon a fair Tryal, I wish

wish he may escape. I do not thirst after blood; but if this Pardon be good, what will become of the safety of the whole Nation? If one, another may escape again by the same method. I shall be scarce able to show my face in *London*; they begin to laugh at me already, out of apprehension that a Pardon, stamped by creation, will set him free. I am concerned for the honour of the House. I do think, that, in the management of this affair, *Danby* has done what was never done by any man in the world. I think *Danby* has betrayed his friend the Chancellor—Upon his advice, he gets this Pardon, and says, “He will not make use of it, unless false witnesses rise up against him”—Now after long waiting and expectation, *Danby* waves all legal means of Tryal, and stands upon his Pardon—But it is “If the House of Commons will raise up false witnesses against him”—I would seriously consider whether there be any way to void this Pardon. I am no Lawyer, but I will offer my opinion. If we cannot get off from this rock, I would rather vote to sit still than go any farther.

Sir *John Hewley*.] “He is now advised to insist upon his Pardon, &c.” I hear it said, that the word “Insist” is not so positive a word, &c. But there is no other signification of the word “Insist,” than “to stand and rely upon, &c.” Though it be doubtful, it must be taken in the strongest sense against him, and it can have no other legal construction than “That he will rely upon it.” It has been said, by a learned Gentleman, “That it may afterwards be voided by Bill.” Therefore I would join in the Demurrer, and proceed to Tryal.

Sir *Harbottle Grimstone*.] Whether this of Lord *Danby*’s be a good Plea, or no, is that which calls me up. I am of the Long Robe, and my opinion is, I think this Pardon is void in several respects, and therefore needs no Bill, for revocation of it. If you go to void it by Bill, before you have the Royal Assent, it will take up a great deal of time, and it rests upon us to prove it ineffectual. Now whether it be void, or no? I conceive it is void by the irregularity in obtaining it. We all know, that is clear,
there

there was no Warrant, &c. Signet, Privy Seal, nor Great Seal. Those were thought no compliments, but essential things, and those, we all know, are the legal Warrants for passing all Pardons. But there is another irregularity in this Pardon, &c. past all cure. By the Statute, there is a Recipe, &c. and the Pardon must bear the same date with the Recipe entered now, and therefore it is void, having no date, and so it can take no measure right. As for the illegality of it, I have not yet heard any thing to alter my opinion. It has been sufficiently cleared to the House. There are things which the King cannot do, and that is what is not consistent with the end of Majesty and Government. A common Nuisance the King cannot pardon. The Suit of the party in an Appeal of Murder the King cannot pardon. But this is of a higher nature than that which we call "Nuisance." This Pardon is "an universal Grievance." *Nocumentum totius populi.* If a great Favourite, an overgrown Favourite, be too great for *Westminster-Hall*, and such a Favourite gets the ear of his Prince, by flattery and insinuation; and shall, upon the confidence of that liberty with the King, be emboldened, and made so daring, that he cares not what Counsel he gives the King, to please his humour for the present—And who will reflect on him? for, says he, "Here is my Pardon." If this be admitted, that the King can grant Pardons thus, it is to no purpose to complain; our mouths are stopped with a Pardon. I am of opinion, that if this Pardon had passed with the regularities, yet it signifies nothing, though it had all the formalities. This is to the detriment and prejudice of the whole Nation, which is not in the King's power to pardon. There are things out of the King's power to command, as things against the Law of God, (*and we ought to obey God rather than man,*) as to do violence to nature, to throw myself down a precipice, I am not obliged to do it. Commands, not warranted by Law, are not to be obeyed. The King is a man, and may be misled by Counsel; but let them look to it that execute such commands. When Counsel give the King
such

such honest advice as is fit, all will go well; but when, by surrendering up a place, all is well, with a Pardon—I say, it is not in the power of the King to pardon an universal Grievance. Whoever gets such a Pardon, I hope, will be hanged, with the Pardon about his neck.

Mr *Garroway*.] I beg pardon, if I speak now. I am not able to speak to point of Law, though I am satisfied that, take the formalities of the Pardon away, and I look upon it as nothing. It is the first of this nature, and without Precedent, that ever, an Impeachment impending from the House of Commons, a Pardon was granted, &c. If the Lords over-rule the Demurrer, Lord *Danby* is quit; and this is your short story. If you put all your stress upon this Demurrer, you take a weak course. I am of opinion that this is no Answer from *Danby*, but an evasion of your Prosecution. His Protestation and Declaration of his innocence is not his Plea. I would therefore send to the Lords, that *Danby* may put in a Plea that he will abide by, and upon it I would charge him with “imputing the scandal upon the King of the contents of the two Letters to Mr *Montagu*,” for one Article; and for another Article, “the obtaining his Pardon surreptitiously.” As for the Pardon, the Arguments against it are pleadable when he is tryed. I would prosecute this business immediately, that *Danby* may answer what he will abide by.

Sir *Thomas Clarges*.] This matter is of great moment. Lord *Danby*’s Plea is entered upon Record in the Lords Book. When he came to his Plea, he said, “He would insist upon his Pardon.” I would be satisfied, whether, in your Demurrer, you may save to yourselves the irregularity of this Pardon. For ought I know, all the Lords in the *Tower* may plead Pardons. The King can do no ministerial act. The King could not seal this Pardon himself. The Chancellor should have told the King, when this Pardon was sealed, “Sir, I cannot be present; do what you will with the Seal; I cannot be by to see an illegal act done by a ministerial Person.” I am weak in the Law, but am convinced, by *Grimstone*’s Arguments,

&c. If this be granted, then the King may do a ministerial act; but it is for that reason void. That which never has been done, cannot be legally done. If it be on Record that no such Pardon has been granted, none such can be. I submit what I have said about the Demurrer, &c. saving the Illegality of the Pardon, &c. But if not that way, then I would go by Bill, and so damn all such Pardons for the future.

Sir Harbottle Grimstone.] I will only speak to the manner and way of your Proceeding. I will tell you my opinion. We need none of these savings, as is moved: Why should we abridge ourselves any way? But go up to the Lords with the whole matter, with the best authority you have for your Reasons, in regard both to King and People, and you must take it for granted, that all those crimes Lord *Danby* stands charged with, are confessed by his pleading his Pardon; as his raising an Army, and truckling with the *French* King for Money to maintain this Plot, &c. and then you may allege the want of date of the Recipe. And then, if the Lords adhere to the opinion, that the Pardon is a good Pardon, the last resort is, by Bill to void it. But I do not believe the Lords will be of opinion that it is a good Pardon, and it is not advisable for *Danby* to put his life upon it. I would have the Lords desired to appoint a day, &c. and Gentlemen of the Long Robe will provide themselves against that time.

Mr Powle.] As to my own particular, I think the Pardon is not good; but the Question is not that now, but what way you will proceed to vacate it. The Reasons are so strong to make the Pardon void, that they need not be farther laboured. Gentlemen seem to be against loss of time, and this of sending to the Lords will lose more. I say, that *Danby* will "Insist." "Rely" upon his Pardon is all one. It remains only to consider whether you will join in Demurrer, or proceed by Bill of Attainder. As for the Question before you, you have heard all that can be said in defence of the Pardon, and then it is time to make some Resolution. I am as much of opinion as any
man,

man, that little can be said for it; but it does not consist with your honour to come to any determination, till you have heard all against it. The Commons will not undervalue themselves, to come and plead with Counsel at the Lords Bar, &c. In Lord *Strafford's* case, the Commons did not argue *pro* and *con* with his Counsel, &c. but they were heard what they had to say; which will be proper, when you come with your Mace to the Lords Bar, to demand Judgment against Lord *Danby*.

Serjeant *Maynard*.] The Earl of *Danby* has both wronged the King and this House; he has put in a Protestation; which, in effect, is a justification of himself, and a diversion of his crime upon the King. He has charged it on the King, and it was unnecessary for him to do it.—But to come and tell a story, upon which no issue can be taken, is but a flourish, and no Plea at all. For putting the blame thus upon the King, he deserves as much punishment as he can do. Part of the Report from the Lord Chancellor, about obtaining the Pardon, &c. was, “That he would not make use of it, but in case of subornation against him, &c.” By that, he lays an imputation upon you—To get a Pardon, under pretence that he will not make use of it, but in case of subornation, &c. and yet he does for his Plea! As for what is alleged, “that a Pardon, for want of a Recipe, is void;” in *Plowden's* Commentaries there is a case of no Recipe, and yet the Pardon was good—The Law sets the degrees of Pardons to be obtained by, that it may not be had clandestinely, and the King deceived in it. A man that is to make defence, &c. will do it at several wards. Lord *Danby* has leaped over all formalities; and this is as a flaw—To the main of it, certainly it is a strange Pardon, that in so many hundred years was never yet done before—When not only the safety of the King, but the Commons Lives, and Religion, and all, may be in danger by it! The five Lords in the *Tower* may have such Pardons, by the same reason, and what then becomes of all your Liberties, &c.? *Danby* misleads the King, in doing all the ills he is charged with, and gets a Pardon for them, when he has done—

He thinks, surely, the thing is so. Great Persons, too great for the Law, and who have done ill by virtue of an exorbitant power, from time to time, *toties quoties*, by such a Pardon, may defeat all calling them to account. There is no *Obstante* to the Impeachment of the House of Commons in this Pardon, and it would be worth your considering, whether general words shall extend to a particular and extraordinary case; where the King is not informed of an Impeachment, &c. and goes not in words to it in the *Non obstante*. But what course will you take? I am a little unready in giving my Judgment. I do not deny that, in those cases, no issue can be joined, when the matter is laid upon the King, and it remains without contradiction. I make but an essay, and am a little doubtful in the matter. To proceed by Demurrer is a little dangerous. And who shall give Judgment in the Demurrer? I think you were well moved to make a Replication to this Plea; the Pardon being got against a known Law, and by false information to the King, and of great consequence, not only to *Danby*, but to all great Counsellors—And withall, I would allege the things, not by formal way of Demurrer. What is charged against him, amongst other things, is, “getting a vast Estate.” You give Money to relieve the Kingdom, and if it falls out that he has diverted the Money to himself, or his friends, it is another Article, and if you proceed singly by Demurrer, you may prejudice yourselves. But if this be a good Pardon, Parliaments are to little purpose. They will get power to do mischief, and heal it by a Pardon, when it is done. Again, I say he has bestowed the Money that the Parliament has given, and we must, by this Pardon, give more Money for him to devour. Some things the King cannot pardon; as a Nuisance, whilst actually complained of. The man is indicted; there is not only a fine to the King (*Distringatur ad respondendum*) but reparation to the people. The King cannot pardon a Recognizance for the Peace; it is the subjects interest to be preserved. How far this is applicable to the case before you, I have humbly offered my opinion.

Sir

Sir Francis Winnington.] The validity of the Pardon; and what is the best way for you to proceed in, is the subject of the present Debate. I am one of those that will not reduce the Law and Rights of Parliament to School Divinity, by Arguments of subtlety, and conclude nothing. If we come not clearly to it, but diversify in the point, we may hazard the Nation as much as Lord *Danby* has done. Without all controversy the Pardon is void. I shall sum up former Arguments only. I shall take it for granted that *Danby* relies upon his Pardon (*and so he repeats his Plea.*) Some things have been said, as to the formality of this Pardon, and some Gentlemen would disclaim that, in case of a man's life—"Impe-*titus, vel non impetitus*" in his Pardon, &c. and a Gentleman said, "It may be, the King knows not of the Impeachment of the House of Commons." But I know of none else. But I will wave that, and go upon the validity of the Pardon. In Appeals, &c. where the King has an interest and share in the suit, there the King may bar an Indictment. Where a man informs *tam pro domino Rege quam pro seipso*, there the King's share of the forfeiture is pardoned only. But where the King has no share, and the King's Serjeant or Attorney General prosecute not, and the King's name is not so much as mentioned, and only by the Commons of *England*, which the Courts of *Westminster* cannot punish; it is you that have the interest in the Suit, and all the Commons of *England*. If what is grievous to the people be pardoned, it is to no end that the Parliament should ever meet. The same Power that made *Danby* venture on this offence, the same has pardoned him, and I know no farther use of Parliaments, than to give Money when it is asked. If the King has no interest in the Suit, and be no Party to it, and grants a Pardon, &c. there is an end of your Constitution. I dare not offer that violence to my own reason, as to say, that this is a good Pardon. Serjeant *Maynard* did not make a conclusive Argument, but I will conclude, whether the Serjeant will, or no. In *Littleton*, &c. it is an Argument, "That the thing is not lawful, because it was never practi-

fed"—In Law, not sufferable. But to distinguish it—It is good in way of Plea, but to void it by Bill—But that is a reason why illegal; and never found in a former age, but is so. I will take the boldness to make conclusions from the Serjeant's Reasons—To say that this is no Demurrer, &c. that seems advisable; there is no occasion to plead this, for it was never done before—Now, whether the House of Commons shall go up to the Lords, and say, not as in the common form of way of demurring to a Bond, but all the Commons to say, this Pardon is a monstrous thing, and ought not to be? I cannot say there was ever any Precedent for Demurrer, because there was never any occasion for it—What will you reply upon all *Danby's* Protestation?—He will say, that is not traversable—But should it fall out, this Pardon ought not to be allowed—It looks bigger than a Demurrer—But if the Lords say, that the Pardon is good in Law, what have you to do? Then you have recourse to a Legislative Bill. Because he has so confessed it, there is no occasion for us to prove it. I cannot blame that Lord, if his life be at stake, for making as good a shift as he can. Life is sweet, and a man will fence as long as he can for it—In the preface of a Bill, may be put, "If such a Pardon be allowed, the Government of *England* will be destroyed, and the Commons of *England* cannot be relieved from the exorbitances of great men."—And we shall have Arguments enough to put into the face of that Bill; and if the Lords have a mind to save the Kingdom, as well as we, they will pass it. Pray let us go roundly to work, and have no more tricks put upon us, as have been for these six weeks.

Serjeant *Maynard*.] I told you, "I could not deliver my opinion positively, without farther consideration, &c." *Winnington* has concluded for me, but one of his Arguments is weak, viz. "That there is no Precedent that it was ever done before."

Sir *Francis Winnington*.] I have learned more from the learned Serjeant than any man. We both agree, though in different ways, and I agree with him, &c.

Mr

Mr *Williams*.] It is incidental to our profession, that we love to spare a little. I perfectly agree with *Winnington* in his Argument. One Question is, "Whether the Pardon be illegal?" And another, "How the Pardon was obtained?" There may be reason to void it by *Scire facias*. I think it is not safe to let the Pardon continue. *Danby* has committed a greater crime in procuring this Pardon, and he is as guilty of procuring it, as of all the rest of his other great crimes. But to make the Lords sensible of it, as well as the people, I would go up to them in a body, &c.

Mr *Hampden*.] You have been well showed the consequences of such a Pardon, and by going away with such crimes unpunished, two great things will be lost, accusing great Men, and accounting for Money. I am not well versed in Records, but in the last King's time (I crave leave to read the words out of the print) in his Answer to the Parliament's nineteen Propositions, the state of the Nation, &c. the Government is there stated, as to Peace and War, and Pardons, &c. After the enumerating his Power of pardoning, and other Prerogatives, "That a Prince may not make use of his high and perpetual power to the hurt of those for whose good he hath it, and make use of the name of public necessity, for the gain of his private favourites and followers, to the detriment of his people," (*See the Print*) If after all this, a Pardon may come, &c. to what purpose is all this stated by the last King?

Mr *Vaughan*.] This Pardon is against common Reason, the Government, and the safety of the Crown. I say, it is against common Reason, for the support of the Government is from rewards and punishments. The power of Pardon from the King proceeds not from any positive Law, but from the reason of the Government. If once it can be made use of to interpose betwixt the greatest crimes and punishments, no man can say but the Crown must expect the greatest ruin imaginable. Suppose the King pardons all crimes for ten years—They will fly not then to Laws, but to Nature, to defend themselves,

and so the Government will fall. By the Statute of R. II, the King could not pardon any thing against his Coronation Oath. Treason was not enumerated in that Oath, because it was not supposed that the King would pardon it. It is the subjects interest that the King cannot pardon a Recognizance of the Peace, but the party may renounce it. If therefore you consider, of what use can the Laws be, if such Pardons be good, &c. ? How odious are they to the Government, the safety of the King, and against Law ! And therefore I am against it, &c. We may go up to the Lords, and show the invalidity of this Pardon, and the way of procuring it. In the late Duke of *Buckingham's* Impeachment, the King might as well have obviated it by a Pardon ; but he got that Parliament dissolved, and put himself into the Star-Chamber, to be rather in the force of justice.

Several then moved, " not to put in the Irregularity of obtaining the Pardon, but to insist upon the Illegality of the Pardon."

Colonel *Titus*.] I would not have you say, " The Pardon is irregular," for this short reason ; it will be some implication that it is legal.

Mr *Sacheverell*.] If you go up to the Lords, &c. as is proposed, I fear you will fail of your ends. I would know, whether, before issue be joined, you can ask Judgment ; next, whether you will go up before you pass Judgment that the Pardon is illegal ; and next, whether you will go up before you show the Lords your Reasons why it is illegal ? And if the Lords differ from you, how will you then argue it ? I offer then that the Question may be, " That the Pardon, &c. is illegal ;" and then I shall propose something farther. But I cannot agree to your going up, till you pass your Judgment that it is illegal.

Sir *Richard Corbet*] Moves, that the Question may be, " That it is illegal, and void in Law." To which

Colonel *Titus replied*,] That is as much as to say, " It is legal and illegal."

Mr *Seymour*.] I have sat still all this day, and have heard very many good Arguments. I do not question your Power or Authority, but will speak as to your Method.

thod. I fully agree to go to the Lords Bar to demand Judgment in those words, &c. but I know not the meaning of the Speaker's going with the Mace to the Lords Bar. You say, "you come to demand Judgment of that which you think is no good Pardon in Law." If they agree not, &c. then you will come to tell them what your Reasons are that it is not a good Pardon.

Mr *Garroway*.] You are put in a good method. Put a Question only, "That the Pardon is illegal," for a resolution to your own satisfaction.

Sir *Thomas Clarges*.] The Speaker came into the Lords House with the Mace declined, and asked Judgment against the Earl of *Middlesex*, 21 *James*.

Mr *Powle*.] In the 18th of *James*, in the case of Lord *St Albans*, the Lords sent to the Commons to acquaint them, "That they were ready to give Judgment, if they came up to demand it;" and they came with their Mace to demand it, but it was declined, held down.

Sir *Francis Winnington*.] If you go to the Lords House in a body of the whole House, you must not leave your Mace behind you.

Sir *William Coventry*.] It is for your honour, not only to see the next step, but to foresee what may fall out; therefore be well acquainted with your strength. You say, *Danby's* Pardon is not good, and you are not prepared with Reasons to satisfy yourselves, much less the Lords; and the Lords declare *Danby* innocent upon it. Let your Reasons therefore be drawn up first, before you go to the Lords, and see what it is you have to maintain.

Sir *Francis Winnington*.] I am glad we did not take the Bill of Banishment of the Earl of *Danby*, when it was offered us by the Lords; it looked like compounding for Treason. *Coventry* desires, "That we should prepare Reasons for our Vote, &c." I would know, what was the Debate all this day, but your Reasons? If, upon every punctilio, a Committee must draw Reasons, we may sit all the summer. When you carry up the Vote, the Lords will see the Reasons of it, as soon as we have, &c.

Sir

Sir *Thomas Lee*.] At a Conference, if the Lords require your Reasons, it will be more for your advantage to give them then, and that *Danby's* Counsel be first heard, &c. that they may have no advantage of your Reasons, and reserve your Reasons till the Lords shall deny you Judgment, &c. Let us have the very words written down, that you, Mr Speaker, are to deliver at the Lords Bar, every word, that it may comport with our Debate.

The Vote was read, &c.

Sir *William Coventry*.] If these are the individual words that you intend to deliver at the Lords Bar, in order to that, I shall offer one thing, that the Gentlemen of the Long Robe may give their Judgments upon. I conceive, it is to demand Justice against the Earl of *Danby*; but the last thing to demand is Judgment. I would not have you put to bring proofs against *Danby*, for an after-game.

Sir *Harbottle Grimstone*.] It is more proper to demand "Judgment" than "Justice," against *Danby*. We have voted the Pardon illegal and void; I would therefore put the Vote into form, as you will deliver it.

Sir *Francis Winnington*.] We are to demand Judgment, &c. because the Lords should not expect us to come and show that this is a void Pardon, and demand Justice upon the Impeachment.

Sir *John Trevor*.] "Justice" and "Judgment" are two things; they are not terms convertible. Justice *convertitur in Judicium*—To demand Judgment, &c. He pleading his Pardon, you must demand Judgment upon his own confession of his charge, for now he is past his Tryal.

A Committee drew up a form of words, for the Speaker to deliver at the Lords Bar, as follows:

"My Lords,

"The Knights, Citizens, and Burgesses, in Parliament assembled, are come up to demand Judgment, in their own names, and the names of all the Commons of *England*, against *Thomas* Earl of *Danby*, who stands impeached by them, before your Lordships, of High Treason, and divers high Crimes and Misdemeanors, to which he has pleaded a Pardon; which Pardon the
Commons

Commons conceive to be illegal and void; and therefore they do demand Judgment of your Lordships accordingly."

The Speaker, with the House, went up, and demanded Judgment accordingly *.

Tuesday, May 6.

Occasionally, upon the Bill for prohibition of *Irish Cattle*, which was read the first time, it was said, "That the King's present Revenue of *Ireland* was 240,000*l.* a year; and all the charges of that Government defrayed, there comes clear into the King's Purse 70,000*l.* a year, which all goes away in Pensions.

"In the last Farm of the *Irish Customs*, Sir *William Bucknall*, the Farmer of them, got a Clause in his Patent, "That all ships should pay their Customs in *England*.—In the *Dutch War*, we lost two hundred sail of ships."

[It was ordered to be read a second time, on a Division, 184 to 133.]

Mr *Treby* reports, from the Secret Committee, That they were ready with their Evidence against the five Lords in the *Tower*; that this Parliament may not break up, without either an Act made, or a Judgment of Parliament given.

Sir *John Trevor*.] I move, that a Replication may be made to the Lords Plea, &c. before we send up to the Lords, "That we are ready, &c."

Mr *Foley*.] In Lord *Strafford's* case, the Commons sent up only to the Lords, to let them know, "They were ready to make good their charge against the Earl." And I move, you will proceed so now.

And so it was ordered.

* Nothing could be more artificial than the Proceedings of the Commons. It was manifest, that, in condemning the Pardon, they, in effect, condemned the man, and yet they seemed to leave the Peers in full possession of their Privilege of Judgment. The Lords, on the other hand, had their expedients and resources as well as the Commons, and resolved not only to center the whole authority of decision in themselves, but

to make sure of such a decision as should be favourable to the Prerogative. In order to which, they made an Order, the same day, "That the House, on the morrow, would take into consideration, whether the Lords Spiritual were to give their Vote in judicature, in Cases of Blood, or upon Bill of Attainder," as a Preliminary to the demand of the Speaker, concerning the Earl of *Danby*. *Ralph.*

Mr

Mr *Powle*.] Moves, "That Persons may be appointed for Managers, &c." (*The Secret Committee were named.*) This is a matter of great weight, and requires help from Gentlemen of the Long Robe. I would have Mr *Williams* added to the Secret Committee for one of the Managers of the Impeachment, Serjeant *Ellis* being made a Judge.

Colonel *Titus*.] We want no Persons in the Secret Committee that have zeal for the service; but we want Persons of the Long Robe, and I desire Mr *Williams* may be added.

Mr *Williams*.] Those that move me to be added, move to expose me, and nothing else. I have not attended the Committee, and I know nothing of their Proceedings.

Sir *Thomas Clarges*.] To make excuse is decent, but to persist in it is very extraordinary. The Briefs for the Managers are all ready, and it is no more than to manage a Cause.

Mr *Williams*.] Though my reputation in the world is very little, yet I would not part with it. If I have a Brief, I must trust to the Papers of another man's drawing, in a matter of so great weight.

Mr *Williams* and Serjeant *Strode* were added to the Committee.

On the Address for the Removal of the Duke of *Lauderdale*.

Sir *Richard Graham*.] I am loth, when the great affairs of the Kingdom call for your consideration, to interrupt you with any Motion which may seem to relate to a particular Person; but he whom I shall name, has so great and large an influence upon Councils, that I think it a service to the Nation humbly to move you, "That an Address may be made to the King, to remove the Duke of *Lauderdale* from his Presence and Councils." It was he, who was instrumental to break the Triple League, to advise Toleration, &c. to bring in Popery like a stream, and Tyranny like a torrent; and who gave opprobrious and nasty terms to the House of Commons. It is he, who has brought in arbitrary Power on the other side *Tweed*,
the

the *French* Ambassador assisting him to raise men in *Scotland* for the *French* service; and all that done after a Vote of this House, &c. This from the year 1670: All I have said I will prove to that time. Before that time, things have been ill, but since, fatal. In one *Scotch* Law, "22,000 men are obliged to march to any part, where the power, interest, and greatness of the King shall be concerned." These words have a great latitude; especially when they are to be expounded by the Duke of *Lauderdale*. It were a large field, if I tell you of what he has done in *Scotland*. I am divided in my thoughts what to move you. Though there is ground for an Impeachment, yet I am not such an enemy to his person as to advise that way. Since your last Address for his removal, 1. he has been made an Earl; 2. has had a Pension; and 3. been made Commissioner of *Scotland*. I shall move you only, "That an Address may be made to the King, to remove the Duke of *Lauderdale* from his Presence and Councils."

Mr *Montagu*.] Out of duty to the King, and not from disrespect to the Duke of *Lauderdale*, I shall second the Motion. When I see the Duke of *Lauderdale* and others added to the Privy Council, I cannot but think that this last project (the new Council) was to save themselves, and not for the good of the Nation; and what good can we expect from it? It is to put new wine into old bottles, and new cloth to piece up an old garment; and this, I fear, will be the consequence of the new Council. You have been shown how dangerous a person he is, of what a nauseous tongue, &c. His insolence to Lord *Cavendish*, who deserves it not from any man, but for having the Duke of *Lauderdale*'s ill will. I will not advise to impeach him, there are such delays in Impeachments. Nothing is more ancient nor parliamentary than Addresses, and I second the Motion to address.

Sir *Hugh Cholmondeley*.] If the design of these Gentlemen, that move for this Address, be to mend affairs, they are in the wrong. Persons have been changed and removed in the Ministry four, five, or six times over, and
neither

neither complaints ended, nor affairs mended. Here one man is removed, and another friend put in his place. Unless you mend your maxims you will never mend your Ministers. When, by misfortune, the King and his Court were abroad in the late times, probably they fell in love with the maxims of foreign countries. When the King came home, mens hearts were so full of gladness and their eyes of joy, that it was thought a standing Army was most for the King's safety; but now we think *English* hearts the safest guard for an *English* Monarch. When we gave away the people's Money so liberally, the King set the less regard on his own Revenue. In those days of joy, we took into our bosom, and into our Court, the children of *Rome*, and they, contrary to all hospitality, intruded their Religion, against the hospitality of the Nation; they debauched our youth with Atheism; they had the confidence not only to attempt, but pervert the greatest of our Princes, fatal to him and us. In a few words I will show you, that the Ministers that have misled the King with these principles, are not merely *English* Ministers—But a Motion forced and unnatural, that great familiarity, in the King's solitude, to foreign Ministers, and especially to the Ambassador of *France*—They say that standing troops are better for the King, than the Militia of Law—For Religion, there is none so gay and genteel as from *Rome*; ours is sour and morose, and not debonair enough for the Court. If these maxims be removed, I hope we may do well; till then, all we do is to no purpose.

Mr Secretary *Coventry*.] The Motion made, “for an Address, &c. for removing the Duke of *Lauderdale*,” is diverted in an extraordinary way by *Cholmondeley*, by laying all the faults of the Government upon the King. If the Duke of *Lauderdale* has been an instrument of what he has said, he is not only fit to be banished the Nation, but the World too. By what he has said, the Parliament is in fault, the Nation in fault, and the King in fault; all in fault. It is not well to make reflections upon the King, on any occasion, and I hope the House will not take it well.

well. He would have the *French* Ambassador set aside, and hopes the King's stomach will the better retain our advice. He is angry with the last Parliament for an Army and Garrisons, and with the King for sending Forces beyond Sea, &c. I would know, whether the Militia and the Army's being in wrong hands did not send the King beyond Sea? I move that no reflection may be upon the King; and to put reflections on so noble a Lord, without saying what you would have, is very odd.

Sir *Hugh Cholmondeley*.] Secretary *Coventry* is mistaken, if he thinks I intended to reflect on the King. My own duty and family put me upon better things. I said, "If maxims, &c. are not changed, it is to no purpose to remove Ministers." Our sufferings are the punishments of our own transgressions. I humbly beg the King's and the House's Pardon, if I spoke any thing hotly or intemperately.

Mr *Dalmahoy*.] I had rather the Duke of *Lauderdale*, or twenty such, were made a sacrifice, than that there should be reflections on the King. As for the *Scotch* Army of 22,000 men, this has been formerly discoursed of here, and it was made appear that *Lauderdale* was not in *Scotland*, when that Law was made: Lord *Middleton* was Commissioner. The Militia is great in *Scotland*, and they appear not above once or twice in a year. I never heard that the narrative of the Plot was printed in *Scotland*, and forbid to be published. I shall only take notice, that I suppose what is alleged is only said by information. No man in his station has defeated the designs of the Papists more than the Duke. When ten or twelve thousand were up in rebellion in *Scotland*, all at a time, did not the Duke show himself a good subject? As to the affront which, it is said, he gave to Lord *Cavendish*, he never put any affront, or shadow of affront, upon him like it. It was said, "That he should point at Lord *Cavendish*, for coming into a Play-house in the King's presence, when the King had forbidden him." And other things have been said, which the Duke knows nothing of. But if I know any particular actions of his in *Scotland*, contrary to
his

his duty, I would say nothing for him. I never saw the *French* Ambassador with him, and I frequent his house. I am ready to condemn him if guilty, and excuse him if innocent—And the King has declared, “That he is not satisfied of any ill thing he has done.”

Lord *Cavendish*.] The honourable Person named me, as having received an injury from the Duke of *Lauderdale*. I had a mark formerly of the King’s displeasure upon me, and it was my misfortune. If the Duke of *Lauderdale* has injured me, I have forgiven him long since. I wish I could as easily forgive him the injury he has done the Public.

Sir *Thomas Clarges*.] I expected not this Motion, else I should have been provided to give you information, &c. Four years ago, you were alarmed with something of the Proceedings of this Lord. I was Chairman then of the Committee for Affairs relating to *Scotland*, &c. and, that morning, the Parliament was prorogued. It appeared then, that this *Scotch* Army might march into *England*, &c. It is true, that, when Lord *Rothes* was Commissioner, the Parliament of *Scotland* made a general Law for the Militia, but this Duke modeled them into Troops, and made the Army useful. But it is as if this man intended to dethrone the King by it; for in the last Clause of that Act, it is wholly in the hands of the Privy Council of *Scotland* to raise and dispose of that Army. In the *Scotch* Rebellion, 1640, the Privy Council there had no authority by Law, but now they have the authority of an Act, to come into *England* to back them. By their Act of Supremacy, and the King’s perpetual Power in all things concerning Religion, he may set up Popery there, or any Religion, when he will, and have an Act ready cut and dried for him. Another Act makes Field Conventicles death, but the Papists may appear how they will. This Act is only for Protestant Dissenters, and if a Popish Prince come to that Crown, he may do what he will; and we then thought that these Laws were dangerous to the Kingdom. Another thing occurs to me. Rigour of death is not enough for keeping Field Conventicles, but
whole

whole Armies quarter upon them, and consume their whole Country, for the offence of some particular men—Only by an arbitrary Power, sweep all away—Club-Law, and Sword-Law. The Civilians say, “Protection follows subjection, and subjection and protection are reciprocal.” When chief Governors let themselves loose from Laws, their conditions of obedience are absolved. If they interpret the marching of that Army “where the King’s greatness shall be concerned, &c.” they may overrun you when they please. The chief Article against Lord *Strafford* was not only for pressing, by his Counsel, to subvert the fundamental Laws of *England*, but in *Ireland* for quartering soldiers to execute Royal Commands, and, as much as in him lay, to make a division betwixt *England* and *Scotland*. This Law of the Militia of *Scotland* is a hostile Law against us. *Ireland* is a Kingdom under the same Law with us, but *Scotland* is under another, and *Lauderdale* cannot be tried here for offences done there—It is time to look about us, that such persons be not near the King. If any man be under oppression in *Turkey*, he may have his grievance heard—Some of the Nobility came out of *Scotland* to complain of *Lauderdale*, but the King was so beleaguered, that they were here month after month, before they could be heard, and, by the arbitrary influence of this man, they could not come to the King to deliver a Petition. There occurs to me something more remarkable; that at the beginning of the unhappy Civil War, though *Lauderdale* was but a young man, yet he was stirring to suppress arbitrary Government. He led the dance in *Scotland*, and we followed in *England*; and it is remarkable, that he who brought us into a War against arbitrary Government then, should be for arbitrary Government now.

Mr *Harbord*.] I hear it said, “That we cannot take notice here of things done in *Scotland*, so as to punish them.” I would fain know, why the subjects are not so happy now, as at the King’s Restoration. When the Marquis of *Argyle* was in the *Tower* here, he was trans-

mitted into *Scotland* to be tryed there. I would have the Duke of *Lauderdale* sent thither, to be tryed there.

Mr *Bennet*.] Send the Duke of *Lauderdale* home ; send him home, with *Cleveland*'s two verses on his back, viz.

“ Had *Cain* been *Scot*, God would have chang'd his doom,
“ Not forc'd him wander, but confin'd him home.”

Lord *Russel*.] If I change my opinion, I ought to give you a reason for it ; but not knowing any one thing that the Duke of *Lauderdale* has done, to cause me to change my opinion, since the last Address by the last Parliament to remove him, I am of the same mind still.

Sir *Thomas Meres*.] Here are no more of the Duke of *Lauderdale*'s Nation than Mr *Dalmahoy*, and though of right he ought not to speak again, yet pray let him.

Colonel *Birch*.] I was one of those that sat here, when this Duke had the like desire before, from the other Parliament, which I hope he will have now. It is said by *Dalmahoy*, “ That *Jesuits* were amongst the Field Conventiclers in *Scotland*.” If so, they were very safe ; but the Conventiclers were executed, and one hears not a word of them. It is said, “ That what we charge *Lauderdale* with, was done before the Act of Grace.” I spoke against that Act then, for it was to serve another turn ; it was not prayed by the Commons of *England*, but for the sake of three or four Persons to begin the game again, in hopes to have better luck. If there be any arbitrary power in the World, it is in *Scotland* ; and I fear this Duke may go through with it here, he, and three or four more : It may be the *French* Ambassador. We, in this lower World, think he carried on things then. They had surely a farther design in *Scotland* : When they brought the *Highlanders* down, a people hardly civilized ; I feared it was to provoke them to raise Rebellion. The great assistance to the Crown of *France*, sent out of *Scotland*, was it not proved at the Bar ? And those who refused to go, were sent bound aboard a ship, and after the King's Proclamation too, that none should be sent over, &c. The Person that informed you of it was Mr *Murray* ; he was clapped
up

up close Prisoner, and appears not yet*. Next, this Duke had a Pension out of your devoted Money to the Navy, the Customs. I think, the King is in the way of ruin, if such persons be about him; and I move as before.

Sir *Francis Winnington*.] This Debate is naturally before you. I hoped this Lord had been dissolved upon the last change of the Privy Council. There are Honourable Persons, of both Houses, of this new Council; but seeing this Lord stands still a Privy Counsellor, and has still the same Ensigns of Honour, I would address for his removal. Since the King has called a new Parliament, and we have hopes of putting all things to right, it is very natural to put all things to right. Therefore I desire you would address. Arbitrary power is the more ready to be exercised here, for being begun in *Scotland*. What has been said in this Lord's excuse, makes him still a Criminal. It is said, "That he has the King's general Pardon, &c. and may be tried in *Scotland*." But if he be Commissioner there, it is almost Treason to do any thing against him. But I say, the subjects of *Scotland* are subjects of *England*. If any *Scotchman* comes into *England*, and offends, he is to be tried by *English* Laws, and he may purchase lands here. They participate of the benefit of the Laws as we do, and ought to be careful of offending them (as in *Calvin's* case.) I would know of *Dalmahoy*, when *Lauderdale* wrote to the King of strange apprehensions they had in *Scotland*, and was raising an Army, and said, "I have made the King absolute in *Scotland*," and the Bishops are at his devotion, and all the sensible men in the Kingdom are under his command, and an Act of Grace has been since, Is he fit to come near the King?—His principles do not consist with the Protestant cause. I have so much love for my Prince, that I think it a dangerous station for him to be near the King. The last Parliament could not prevail with the King to have him removed. There was a complaint then of the Counsellors of *France*, and a shame that we helped not the

* See Vol. IV. p. 279.

Protestants; but by secret advice we helped the *French*, and the Protestants will fare the worse for it for ever—Some went to the *Dutch*, for the sake of the Protestant Religion, but were forced to run away and hide themselves. If we cannot tell the King who are these bad men, we are lost, we are gone, and reprobate; and I hope the King will make this Duke an example for bringing his fellow-subjects into servitude and slavery; and therefore I move for an Address, &c.

Colonel *Titus*.] I am much surprized at this matter, and much mistaken in some particulars. I did not think that any man that would not pass in the last Parliament would be in much danger of passing in this. Next, I would have Gentlemen consider in what state the Kingdom is, and what this Duke has committed; he has been the great cause of what was, or is, of our misfortunes. Those that have sat in Council so many years (as some have done) let them tell you, whether ever the Duke of *Lauderdale* was on the merciful side. I know not how some of us may have occasion for the King's mercy; and therefore I would not have him about the King. When the last Parliament made an Address to the King for his removal, &c. they were denied and neglected; and it appears that he is out of the reach of all Justice. Some persons have made a justification of his actions—The next day after the last Parliament made their Address for his removal, he was in the very Chariot with the King—He never arrived to the Dignity of an *English* Peer, till he was under the indignation of the *English* Commons. It may be, that an accusation of the House of Commons is one of the felicities of man. The Sheriff of *Northamptonshire* was committed to the Serjeant for a false Return*, and soon after he was knighted. We have impeached an Earl, (*Danby*,) and he will presently be made a Marquess; and we may reckon from a Baron how to rate a Marquess. Some may say, "What have we to do with the affairs of *Scotland*?" But we meddle not with the *Scotch* Council; it is because he is an *English* Counsellor, that we

* See Vol. VI. p. 186.

address,

addresses, &c. It is said, "You may impeach him." But when you cannot remove a Counsellor by Address, you lose the Privilege you ever had. 50 *Edward III*, ill advisers of the King were removed, and nobody will doubt but there are such now. In *Hen. IV*'s time they were removed for mewing up the King, that he did not take advice from his proper Council. 5 *Hen. IV*, the Abbot of *Glastonbury*, his Confessor, and one of his bed-chamber; he had no objection against them, but dismissed them, because distasteful to his people. For that very reason, because we have Bills of great consequence before us, he that has put all obstructions to them formerly, I would have him removed. Till that be, we have no hopes they will pass. Therefore, &c.

Sir Thomas Littleton.] I am persuaded, that, in the complection things now stand, they are far worse with us, &c. yet I am sorry that those who were against this Duke in the last Parliament are fencing and distinguishing in this (*He meant Capel, whose Argument the Compiler did not bear.*) I am for this Address, to come to a short issue. The King told you, in his Speech, "He would take the advice of his Parliament, and next to them, that of his new Council." I would now fain try what issue this first impression will have. If *Capel*, and the rest of the Privy Counsellors, be of another opinion in the Address against this Duke, we shall be little the better for the change. Try it now.

Mr Garroway.] I have one Argument, and but a short one. I fear this change of the Council has done us no great good; the old leaven is there still. We were told a tale, that the *Jesuits*, for whose execution we addressed, were sent for to the Lords, &c.* Let us try whether these *Jesuits* will be executed, or not; and this experiment upon the new Council for removal of the Duke of *Lauderdale*, &c.

Sir Robert Peyton.] This Duke has hindered the printing of *Coleman's Tryal in Scotland*.

* This was delivered the day before, in a Message from his Majesty, by Lord *Ruffel*.

Lord *Huntingtower**.] Those men spoken of, &c. were raised to suppress the Rebellion, &c. and Mr *Oates* informed that there were *Jesuits* amongst them. They were in actual Rebellion, and the King may quarter upon his subjects by the Law of *Scotland*. I know not why this Lord should be singled out, when many more were of the Council at the time when those Advices (spoken of) were given. He has done that in *Scotland*, which was never done before in many ages, viz. he caused the Act to be printed for the Money given here for a War against *France*, and a Proclamation. (*This made many laugh.*) If you remove this Person, you will bring *Scotland* into Rebellion. None are against him there but factious persons, and I fear it will not be long from hence. I know that the Duke of *Lauderdale* denied those forces to go into *France*, &c. And when you put the Vote for the Address, I will be against it.

Lord *Cavendish*.] What calls me up is what is said by Lord *Huntingtower*, "That the enemies of this Duke in *Scotland* are factious persons." I know many of them, and that they are of as great loyalty, honour, and estates, as any are in that country.

Sir *Richard Graham*.] I will answer that they were in no Rebellion, and those whom *Huntingtower* accuses are as good Protestants, and of as great loyalty and estates, as himself. Such as the Marquess of *Athol*, and Lord *Roxburgh*, &c.

Mr *Harbord*.] In the last Parliament, there were Motions for Addresses to remove the Queen, the Duke of *York*, the Treasurer, and *Lauderdale*, and you will see what influence this Lord had. Several Gentlemen, that voted for the removal of the Queen and the Duke of *York*, were not put out of their Places, but when they voted against this great Duke, they were removed. Judge you then what interest he had with the King.

* Grandson to the Earl of *Dy-sart*, to which title he afterwards succeeded in his mother's right. In the Reigns of King *William* and

Queen *Anne* (till the Union) he was Knight of the Shire for the County of *Suffolk*, and was Grandfather to the present Earl.

Sir *Thomas Lee*.] For some few Apprentices, that pulled down bawdy-houses, it was construed Rebellion in them all; so has the Duke of *Lauderdale* declared them Rebels in *Scotland*.

Mr *Sacheverell*.] You have been told of an instance of this Duke's zeal for War with *France* by his Proclamation, &c. in *Scotland*—and that was all. I have observed all along, that *Lauderdale* began these arbitrary things in *Scotland*, which he did afterwards attempt in *England*; as the Declaration, &c. He began to send men for *France* from *Scotland*, and then here. What one action has been done by him but arbitrary? I hope you will refer it to the Committee, over and above the Address, to inspect the Laws of *Scotland*, and you will find the Duke is no friend to *England*, nor *Scotland*.

Resolved, That an humble Address be made to his Majesty, to desire his Majesty to remove the Duke of *Lauderdale* from all Offices, Employments, and Places of Trust, and from his Majesty's Councils in *England* and *Scotland*, and from his Presence for ever.

Wednesday, May 7.

A Message from the Lords, by Mr Justice *Atkins* and Mr Justice *Dolben*, to acquaint the House, “ That the Lords have appointed *Saturday* next for hearing the Earl of *Danby* make good his Plea; that the Lords have resolved, that the five Lords in the *Tower* shall be brought to their Tryals, upon the Impeachment against them, on this day sevensnight; and that the Lords have appointed an Address to his Majesty, for naming a Lord High-Steward, in the case of the Earl of *Danby*, and the other five Lords; and that the same shall be in *Westminster-Hall*.”

Sir *Thomas Lee*.] How your Committee should behave themselves, at Lord *Danby*'s Plea, and what is to be done, I would have the Committee consider; and that to-morrow you would rise timely, that the Committee of Secrecy may have five or six hours to prepare for the Tryal. They will have time little enough.

Mr *Swynfin*.] Consider, this business cannot admit any delay. To-day is *Wednesday*, and you have but a short time to prepare for Lord *Danby*, &c. The Gentlemen of

the Robe are not here: I would send the Mace for them to the Bars, and when they are come, fall upon the consideration of Lord *Danby's* Plea, upon what the Lords have sent you, and consider what you are to do.

The Serjeant was sent to all the four Bars to command the attendance of the Members of the Long Robe*.

Mr *Powle*.] This case will govern itself by the Precedents of former times. It is said, "The Precedent of Lord *Strafford's* Attainder is abolished, and what relates to it, &c." But in that case, after the proofs were heard at the Bar, he desired that Counsel might be heard as to matter of Treason. The Commons were only present, not as pleaders, and all the House was there. I think they made a step too far in it. I would have the Long Robe heard.

Sir *Thomas Clarges*.] In Lord *Strafford's* case, you had Managers of the Impeachment, and he had Counsel at the end of his Tryal, not at the beginning. The whole House went up to demand Judgment against the Earl of *Danby*, and if Counsel come to justify the validity of this Pardon, I would advise you to send nobody at all to hear it: I would take no notice of it; and pray hear the opinion of the Robe.

Colonel *Birch*.] I know that Proviso in the Bill of Attainder of Lord *Strafford*, "That it shall not be brought into example, &c." is that the Judges shall have no power in declaratory Treason, &c. And it is generally mistaken, as if the Power of Parliament, in declaratory Treason, was taken away by that Proviso. I desire, if that be declaratory, as to the Judges only, that that Precedent may be cleared up to you.

Mr *Swynfin*.] It is not that Proviso that is supposed, which takes away that power from Parliament, &c; but that Statute you made in reference to restoring the Earl of *Strafford*, in repealing the Attainder, &c. that is considerable. In that there is a recital of the whole Proceeding against him, by Articles of Impeachment; how far that proceeded; and when that was left, how the Parliament

* This is not mentioned in the Journal.

went by Bill of Attainder; and the revoking Clause takes away all those Proceedings. The Record taken out of the Lords Journal, and that way never to be used in Parliament. It was so far urged in another case, (that of the Earl of *Clarendon*,) that it became a Question, whether a Peer, accused of Treason, should be imprisoned without special matter. That being the case, that Statute of the Repeal, &c. ought to be read.

Mr *Wogan*.] On the conclusion of Lord *Strafford's* Tryal, a point of Law did arise about accumulative Treason, and the Lords would not judge him upon it; and so the Commons withdrew, &c. and then they brought up a Bill of Attainder. It is below the Dignity of the House, for their Members to argue with Lord *Danby's* Counsel; but it is convenient that some Members do go down to inform themselves what the Counsel will say, as to the Pardon, &c. The Statute of *R. II.* was made, that the King should not be deceived in any Grant; that all Pardons, and other Grants, should pass such hands and Offices, &c. I suppose that Lord *Danby's* Counsel will justify the *Non obstante* in the Pardon, &c. Next, whether a Pardon subsequent to an Impeachment is pleadable, and the King by a Pardon can prevent the matter, &c. and whether there be such an interest in the Commons, that the King cannot pardon, *pendente lite*?

Mr *Swynfin*.] First, take the Lords Message into consideration; but if, upon that Debate, any thing arises, then it is needful to read the Act of Repeal of Lord *Strafford's* Attainder.

Mr *Powle*.] I would have that Act read, to clear Gentlemens minds. I see nothing in that Act but that you may go by Bill of Attainder.

The Act was read, 13 *Char. II. Chap. 29.*

Serjeant *Maynard*.] The Lord High Steward is not only in *Danby's* Case, but the five Lords, &c. I understand not what the Lords mean by a High Steward*.

* The uneasiness which the Commons showed on this occasion, arose from a jealousy that the Lords meant thereby to leave it in the King's breast to put a stop to all their Proceedings by refusing, or delaying to constitute, a Lord Steward. *Ralph.*

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He may have a name, but not office. There are but two ways of Tryal in Treason or Felony; either the person is indicted, and tryed by a Jury, or, if he be too high for the ordinary course of Law, by Impeachment. But in the ordinary course of Tryal of a Peer, the Lord High Steward appoints what Lords shall be Tryers, as many as he pleases above the number of twelve; but this quite differs when a Lord is tryed by the whole body of Peers in Parliament. The High Steward is not then Judge in matters of Law, but every Peer particularly. In *Præmunire* the Lords are tryed by themselves, and they can have no challenge, and though three or four of his enemies were named of the Jury, if that could be supposed, he can have no challenge. A Commoner may challenge thirty-five at Common Law, because he likes not the men peremptorily, but the High Steward can admit no challenge, if the Lord to be tryed have ever so good a cause to shew. But what I drive at, is, that, in the ordinary proceedings of the Lords, the High Steward is in the nature of a Judge. A man indicted at the *King's Bench* cannot plead not guilty, if he have a Pardon, but may plead his Pardon. The Lords can have no challenge, because the Baronage and Peerage of the Realm are their Tryers. I have observed, that when Lords have been tryed, the Steward of the King's Household has been Lord High Steward—Now the Lords have a High Steward. The case of Lord *Danby* and the five Lords is very different; the case of the five Lords is fact to be tryed, but in that of Lord *Danby* there is no fact to be tryed, for he pleads his Pardon. Call him a High Steward, or what you please, but the Lords try Lord *Danby*. Now the Question is, what you shall do in this case? It is a case that never happened before. A man questioned for such high crimes never pleaded a Pardon; the thing was never done, and therefore I cannot tell you what has been done. In Lord *Strafford's* Impeachment, twelve persons were named of the Secret Committee; they examined the whole business; it is now thirty nine years ago. They desired some of the Long Robe to be added; thereupon I
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was added to prepare the charge, and make good the Evidence. There is a worthy Gentleman now of the House, (Sir *Charles Harbord*,) who was one of the twelve; he may inform you whether a High Steward was named; be pleased to hear him. Sir *Anthony Irby* was of the House then also.

Sir *Charles Harbord*.] He was not then High Steward as in other cases, for here all the Peers must give their Judgments; there was "Guilty, or not guilty?" But here, in Lord *Danby's* case, is no such thing; he puts all upon the King. This whole thing is in point of Pardon. I will serve the House with the best information I can.

Sir *Henry Ford*.] I was present at Lord *Strafford's* Tryal; the Earl of *Arundel* was Steward of the Household, and Lord High Steward then.

Serjeant *Maynard*.] I know not what he was, whether High Steward or not, but he was a necessary person to hear the Evidence.

Sir *Charles Harbord*.] *Maynard* has told you true; he was not High Steward to name twelve Peers, but only to hold the Court of Peers below in *Westminster-Hall*. The Lord High Steward, in Lord *Strafford's* case, was *quasi* a Chairman, to put Questions. My opinion is, that it is best for you to appoint Members to be present; else you will never be informed what the Counsel say, as to the Pardon; but not to bandy there with Counsel.

Sir *Francis Winnington*.] There are several matters under your consideration as to the five Lords: I would not clog this Debate relating to the Earl of *Danby* with them. There is nothing that the Lords have done, as to the five Lords, but what is regular and customary. There is a difference; when an accusation is in full Parliament, a Lord Steward then is but in the nature of a Prolocutor. In vacancy of Parliament, upon the Tryal of a Peer, a Lord Steward is appointed by the King; but in both those cases, they are no more Judges than the rest of the Peers; and methinks it is not worth your curiosity to debate it. On the contending it, as to *Danby*, I will offer you my thoughts. As I have been always sensible of
this

this Pardon, I shall never have any comfort to come to Parliament again, if that be a good Pardon. Now the Question is, what method you will take, that you may not be prejudiced in your cause. *Danby* puts his life upon his Pardon. For his Counsel to appear for him to justify his Pardon, that is not irregular at all; that is a right due to the prisoner; but the Question is, how the Commons must demean themselves, whilst the Counsel is to be heard? I apprehend that *Danby* will come to the Lords Bar, and have his Pardon argued, and the Commons not be present at all. And upon Debate of Counsel, either the Lords will allow it, or if they conceive it doubtful, they will send you word; but you are not to advocate it with the Counsel. The Lords Message tells you, "That they have appointed *Westminster-Hall*, &c." But the Lords sitting, being not local, they may go from one room to another, &c. but I am utterly against the House being there. In Lord *Strafford's* case, the Commons were present, because they were to make good their charge; but in *Danby's* case, here is nothing but a Question of Law about the Pardon. You may go and hear the Counsel's Arguments as private Gentlemen. If their Arguments stick not with the Lords, you will hear no more of them; if otherwise, they will send them you down—It is not for us to debate their Proceedings, but where it is prejudicial to our cause. If they doubt, the Lords will give no Judgment, and they will communicate the Arguments to you, and here it comes naturally for you to argue against the Pardon.

Mr *Sacheverell*.] I desire the case may be a little opened. I fear you will find some difference with the Lords about the Lord Steward, &c. I would have satisfaction, whether, before Lord *Strafford's* Tryal, there was ever a Lord Steward in case of an Impeachment from the House of Commons? Then let any man show me how, if there be a Lord Steward, you can confer with the Lord Steward's Court, and the Lords no House; and there is an end of your conferring, they not being a House. I would know, whether there was ever a Lord Steward to try
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matter of Law? I fear the Lords will undo one point of Impeachment that they have already admitted. If they get that point of a Lord Steward (appointed by the King) in time of Parliament, they will get it out of Parliament too.

Mr *Powle*.] I agree that, before Lord *Strafford's* Tryal, there was never any Lord Steward appointed for Impeachments, but out of Parliament only, upon Tryals in Appeals in Parliament. A Lord Steward was not appointed, but was hereditary in the Duke of *Lancaster*. 1 R. II, an Archbishop of *Canterbury* was tryed, and there was no Lord Steward. But in Impeachments the only case is in Lord *Strafford*; but the ill consequences were not then objected, for he was not properly as a Lord Steward, but they sat as a House of Lords, and they spoke "My Lords," when our Managers gave it their appellation; whereas the Lord Steward is called "his Grace," when applied to. That shows plainly, that they sit as a House of Lords, and not as a Court. But be he Steward, or what he will, if the Lords be under the notion of a House of Peers, there is no encouragement by it to try an Impeachment out of Parliament. Now the proper Question is, what Message is proper for you to return to the Lords? I think it may be, "That you will attend the Lords, to make good your charge against the five Lords." But you ought not, as a House, by your appointment, to be there, to hear the Counsel for Lord *Danby's* Pardon. Having once passed your Judgment, it would be too precipitate to go to argue. I would signify to the Lords, "That you would not be present by a Committee, nor the House." It is an improper course in the Lords, to go to *Westminster-Hall* to hear a Pardon argued. Whenever we go there, we treat with them, and speak to them, as a House of Lords, and not as a Court of Judicature. The Lords have appointed a day for the Tryal of the five Lords, which you may prepare for, but as to Lord *Danby*, &c. it is not fit that you should be present by yourselves or others.

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Mr *Vaughan*.] I am against your going, when Lord *Danby* appears, for another reason. You go to hear your own Vote arraigned before your faces, and I would not be he that should be a Counsel for Lord *Danby* to do it.

Mr *Paul Foley*.] In the case of *Weston*, there was no Chancellor in *R. II.* If he was a Bishop, he could not be present; but it appears by the Rolls, that there was no Lord Steward appointed by the King, but by the Lords. Now whether we be present, or not, I challenge any man to show me any Impeachment tryed, and not in full Parliament. That being so, how can any man have a Pardon pleaded, and we not there?

Sir *Francis Winnington*.] With your leave, I will speak one word more. The Impeachment is in the name of all the Commons of *England*, and they are all parties to it. The Lords, by assigning *Danby* Counsel, are Counsel against themselves. *Lane*, the Attorney General, was allowed to be at Lord *Strafford's* elbow; but I would have a Precedent showed me, when ever, a charge being confessed, any Commoner came to argue us out of the case. I desire to know, whether, if the Lords do assign Commoners of Counsel for the prisoner (*Danby*) those Commoners are not parties? The Judges are indifferently to declare the Law; so are the Lords; and I look upon it as a high matter, for Commoners to be of Counsel in this case. If the Judges opinions are asked, there it is necessary for you to be in full Parliament; that the whole Commons may see Right done by them.

Sir *William Coventry*.] I shall not meddle with points of Law. I heard it said, "That Counsel ought not to appear, because they are Commoners, but that the Judges may argue this Pardon, &c." But they are Commoners, as well as all the rest of the Counsel. A Commoner may be impeached by Commoners, and therefore in favour of life, I would not have things restrained. If the Judges be in Purgatory, a middle state betwixt Lords and Commons, I never heard that before. In the Lords House the Judges cannot open their mouths, but by command
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of the Lords; and it is but just, that *Danby* should have somebody also to plead for him. It is fit to consider what part you will take in this matter, if we are sent there, neither as a House, nor Committee, nor Managers, and if Law be argued there, and only on *Danby's* side, where shall the Commons be heard to argue? When we took exceptions only at the place that Lord *Mordaunt* sat in, when we impeached him (which was upon a stool within the Lords Bar,) about that nicety the Lords would not admit so much as Conference. If you have Law to maintain the invalidity of the Pardon, come with it; for in this, you come not so near a co-ordinacy with the Lords as in Bills. This is Judicature. If you put this too forward, the Lords will say, "It is your fault that you appear not;" and so I know not where your Arguments will ever be heard. I speak with great tenderness in a thing out of my way; and the matter is so obliterated, and hard to find in ancient Precedents. Now I would move you to have the Committee consider, whether *Danby's* Counsel shall deliver their Plea in writing, and then you will make no scruple in answering that.

Ordered, That a Committee be appointed to consider of the Lords Message, and to search Precedents, touching the Methods of Proceedings, &c.

Thursday, May 8.

Sir *John Trevor* reports the Address, &c. for Removal of the Duke of *Lauderdale*. See it at large in the *Journal*.

Resolved, That the House will present it in a body*.

Sir *Thomas Clarges* reports from the Committee, &c. the Methods and Circumstances of Lords Tryals: That they looked over Lord *Strafford's* Tryal—Forty Commoners and twenty Lords were appointed, who did assert and agree what Methods were to be observed in the Proceedings. The Committee ordered him to report no Opinion, but barely Matter of Fact.

* To this Address the King swer;" which however he never coldly replied, "That he would did. consider of it, and return an An-

Sir

Sir *Thomas Clarges*.] In the Precedent of Lord *Strafford's* Tryal, I find that he had his Counsel, but they did not interrupt the Evidence, but when all was done they spoke to matter of Law; but here in Lord *Danby's* case, the Lords begin with Counsel. The Committee did think it the safest way to send for a Conference with the Lords to agree to methods, &c.

Mr *Hampden*.] I know not what reason has induced the Committee to this opinion. So far as concerns the five Lords in the *Tower*, they have done well; but what is this to your business of Lord *Danby*? Will you go and adjust it with the Lords, whether you shall be there, when *Danby* is there with his Counsel? Or will you treat with *Danby's* Counsel? It concerns not your service to go, and less your dignity to go—It may be, another Question will be, Whether he shall have his Counsel, or not? However, do not this. When you manage, &c. that is another case. Take your own Resolution in it.

Colonel *Titus*.] It will be absolutely necessary for you to go and examine the circumstances. We have passed our Judgments, "That the Pardon is not legal," and the Lords have given us notice, "That they will hear *Danby* by his Counsel, to the validity of his Pardon." Suppose we are not there, and the Lords hear his Counsel, and there be no objection against them, and the Lords are convinced, or not convinced, and *Danby* has many friends amongst them, and they say it is a legal Pardon, then we have brought our business to a fine pass: *Danby* is acquitted, and we know not how he is acquitted. To hear, at least, how Counsel acquit themselves, I would appoint a Committee, and move the Lords, &c. to appoint another, to adjust this matter, as was done in the case of Lord *Strafford*.

Sir *Thomas Lee*.] I think it hard for you to delegate your Power to a Committee in so great a difficulty as you are upon. The Lords having told you they would try *Danby*, &c. in *Westminster-Hall*, and you not present, I know not what you will do after it. I am not versed in these matters of a Lord Steward, to declare in matter of
Law,

Law, &c. and many difficulties will arise upon you, should you desire a Committee of Lords, &c. without informing them of the grounds and reasons, and make objections against the method they are in.

Sir *Thomas Clarges*.] All the Committee agreed that this method should be taken, but left it to you, without any Opinion given. In the Extract of Lord *Strafford's* Tryal, &c. the Lords sent down Lord *Strafford's* Answer to the Articles, &c. to the Commons, by Mr *Whitlock*: "They send to this House to prove the Charge, and manage the Evidence, by Members of their own." For hearing, in *Westminster-Hall*, &c. implies the Commons present. They might else hear the Counsel at their own Bar in the Lords House. It was agreed by the Committee, in Serjeant *Maynard's* Chamber, to be the safest way, and the best method, to follow the Precedent of Proceeding in Lord *Strafford's* case.

Mr *Boscawen*.] The Gentleman (*Talbot*) wholly mistakes the thing; for the Attainder of the Earl of *Strafford* is repealed, but not the Impeachment. They are two distinct things. The accumulative part only is repealed.

Colonel *Titus*.] Can any man think that the method of Tryal is altered? Can any man think that, because an axe was carried before Lord *Strafford*, that formality is repealed? Or that the Lord Steward's Office is repealed?

Mr *Vaughan*.] I do not think it for our Dignity to be present in *Westminster-Hall*, when *Danby* is there, &c. When an Accusation is made in Parliament, it is not by a particular Member *qua* such, but it is the Accusation of all the Commons of *England*. Every Commoner of *England* is here present, and the Counsel are Commoners, and you cannot be present; but this you may do, you may punish the Counsel; for they affirm by their Arguments, against a Resolution you have taken. You ought, at a Conference, to tell the Lords, that you cannot be there present, but desire *Danby's* Reasons to be given you in Paper, as the five Lords Reasons, &c. And

then you may show the unreasonableness of your being present to hear the Counsel argue.

Mr *Paul Foley*.] At the Committee, all were of opinion, that no Lord High Steward had ever been appointed by the King, unless in Lord *Strafford's* Tryal; and he was but in the nature of a Speaker, and he can do no harm. As there was no Precedent of it before, so, I believe, the Lords were led into a mistake. If we can show a Judgment given upon an Impeachment, without a Lord High Steward, then the Lords may wave it. I am of opinion to prevent the prejudice that may come by the Precedent. I have informed myself of the Commission the Earl of *Arundel* had for High Steward at Lord *Strafford's* Tryal: If there be no Commission but that, the Lords may make their Speaker; the King may make one when he pleases. The Chancellor is Speaker by Commission. But if there must be a Commission to try Peers in Parliament, I know not but that it may be Error, as much as if the Chancellor should give Judgment in a case of the *King's Bench*. Another thing was discoursed at the Committee, whether the House should be there in person? But there was no case found of the Pardon, &c. Many of the Impeachments in Parliament, and all the steps to condemn or acquit, are to be in full Parliament, and that is a reason why we ought to be there. The Lords, it seems, expect our company to hear the Counsel for *Danby's* Pardon. In Lord *Strafford's* case, when the Counsel argued, the Commons were all there, and the Counsel were as private Gentlemen assigned him, and the Lords resolved in their own House. This morning, at the Lords House, I looked over the Order. Their Order is restrictive, "to hear what Lord *Danby's* Counsel has to say, in justification of his Pardon." If the Lords think it not reasonable to condemn him, unless his Counsel be heard to matter of Law, we may be present, and return again to our own House.

Mr *Powle*.] There passed an opinion current in the House, &c. which I gave into, but since I have thought of it. In 21 R. II, in the case of Lord *Cobham*, Judgment

ment was pronounced by the Duke of *Lancaster*, Lord High Steward. In the Archbishop of *Canterbury's* Tryal there is nothing of a High Steward; but in Lord *Cobham's* case, it does expressly appear, that at his Tryal there was a Lord High Steward, by express direction: For the High Steward is rather the Lords servant, or Speaker, than a Judge, or Director of the Court. There is another Note in *Placita Coronæ Parliamenti*. There is particularly a High Steward appointed, &c. And that probably is the reason, why the Lords admitted a High Steward in Lord *Strafford's* case; and since it has been admitted, I see no great injury in it. Counsel was assigned Lord *Strafford* to a particular point, as to the Pardon of Lord *Danby*. In the same Parliament of *R. II.*, was the case of *Arundel*, Archbishop of *Canterbury*. (Then five Lords appellants did appeal a certain number of Lords of High Treason in *pleno Parlamento*, for obtaining and exercising a Commission.) In 11 *R. II.*, he pleaded his Pardon. All was done for the public good. Another he pleaded, 17 *R. II.* They did, by Act of Parliament, reverse that Act, 11 *R. II.*—1 *Hen. IV.*, though the things were condemned, yet the manner of Proceeding was not condemned. The Commons requested the Lords Judgment as to that particular Pardon; who judged it to be a blemishment to the King's Royal Crown and Dignity, and surreptitiously got, and voided it by Act, &c. Then the Lord Steward, the Duke of *Lancaster*, acquainted Archbishop *Arundel*, "That his Pardon was repealed by Act of Parliament, and if he had nothing else to say for himself, he must pass Judgment upon him." And he was banished. Now I desire you to consider, whether this Record I have mentioned is not fit to be translated. Now whether the King can pardon is a Declaration of the Law, and, in points of declaring Treason, the Commons joined with the Lords. It is worthy your consideration, whether, if the Lords declare that the King has this power of pardoning, all the Commons are not concluded by it. I am clearly of opinion, that, whether you go in a body, or in a Committee, to *Westminster-Hall*,

it is against the Dignity of the House. Now by solemn Vote you have declared this Pardon to be illegal, you to sit and hear Counsel arraign your Vote, is very indecent. You may let your Members go as spectators—Else you will go to try a man, after you have given Judgment—You hear that yourselves are precipitate. Therefore I would send a Message to the Lords to take what course they please, to inform themselves of the Pardon, but that you will not hear it argued. If the Lords please to confer with you on the Reasons why they cannot judge the Pardon void, it may be for your honour.

Colonel *Birch*.] You have heard from the Lords, that they have set a day for Tryal of Lord *Danby*; that is, his Pardon. In the case of Lord *Strafford*, there was a Committee appointed, &c. If you will put things together, I would desire a Conference with the Lords, that a Committee of Lords may join with us, to consider of the ways, not only of having Counsel in Lord *Danby*'s case, but that what relates to the five Lords may be put into method.

Mr *Sacheverell*.] I think this is a weighty point, and that it ought to be considered of. As for that of *Danby*'s Counsel, I would only put the Lords to declare how far they will make use of it. Next, "That we hope the Lords will not introduce any new method of Proceedings. That as you have searched Precedents, so they may likewise." And I hope the Lords will not go any unusual way of Tryal, but the usual. Next, I cannot apprehend what should induce the Lords to address the King for a Lord High Steward, since the Proceedings in Parliament, of like nature, have been in full Parliament. Next, "That the Commons do not doubt to give the Lords such satisfaction, concerning the Pardon, as shall convince their Lordships, &c." And I doubt not but the Lords will give you such satisfaction as that the matter will be settled.

Sir *Thomas Clarges*.] I like the matter well, but not the manner; for this will beget Conference upon Conference without end. I would rather secure the thing by a Committee of both Houses, and then the Question about

about the Lord Steward, and the Question about the Precedents, will all be settled. Conference will be tedious, and the time will not bear it.

Sir *Richard Cust.*] That way last proposed will be longer. It must be by Debate, and since that end cannot be foreseen, I rather close with *Sacheverell's* Motion, and would leave your Reasons with the Lords. In the 17th of *Rich. II.* Chap. 6. no Pardon for Treason or Felony, &c. unless it pass the Privy Seal, &c. except when the Chancellor may grant a Pardon of course without speaking with the King.

A Conference was ordered, where the Commons acquainted the Lords, "That they could not apprehend, why their Lordships should address his Majesty for a Lord High-Steward, in order to the determining the validity of the Earl of *Danby's* Pardon, as also for the Tryal of the other five Lords, because they conceive the constituting of a High-Steward is not necessary; but that, upon Impeachment, Judgments may be given in Parliament without a High-Steward: They therefore propose a Committee of Lords and Commons, to consider of the most proper ways and methods of Proceedings upon Impeachments of the House of Commons, according to the usage of Parliament, that all inconveniences may be avoided."

Sir *Robert Howard.*] I know not what to call this bringing Lord *Danby* to *Westminster-Hall*. It looks like a pageant. I know not what to call it. There was never such a thing brought before the World. A criminal to be brought to the Bar, &c. and nobody against him; all for him, and you must go to hear Counsel argue against your Vote. In my opinion, I would clear that matter first.

On the Bill against any Member of Parliament accepting an Office of Profit during Parliament*, [which was read the second time,] one said, "*Accepit beneficium, amisit libertatem.*"

Friday, May 9.

Sir *Gilbert Gerrard* makes his Apology for his Pension out of the Excise.] What share I had out of the Excise was in compensation of part of the Farm which I took,

* This is called in the Journal, of Members elected to serve in "A Bill for the better attendance Parliament."

&c. and I appeal to Sir *Stephen Fox*, whether I had any thing out of the Revenue, but in compensation of the Farm, &c. My reputation is as dear to me as my life, and if I took Money to give any one individual Vote against my conscience, I had rather be buried as deep as the centre of the earth. I will venture my life for your service, and have been against all things of Popery, and I was, the last Parliament, for removing the Duke of *York* from the King's Presence and Councils, &c. and against the Proviso for him in the Act for the Test of both Houses, &c. I have no more to say, but will withdraw, if you please, and leave myself to your Judgment. *He proffered to withdraw, but was forbidden.*

Sir *Henry Capel*.] No man has the least suspicion of this Gentleman. But I would have you send for Mr *Charles Bertie*†, who was mentioned as a person who can inform you of several Pensions.

Which was ordered accordingly.

Mr *Sacheverell*.] The Law has gone upon several Priests, &c. and yet the town is full of them; and no wonder, when one of the Houses of Parliament countenances their being here. The Lords have sent for several condemned Priests. I would know, why the Lords send for them? They can give no Evidence, and the execution of them is delayed. I would send to the Lords to know the reason of it.

Sir *Robert Carr*.] If the Lords can dispense with that Statute of the Oaths of Allegiance and Supremacy, they may dispense with any other Law.

Mr *Powle*.] The Question is now, whether this be a seasonable time to set this Debate on foot, and quarrel with the Lords? Yesterday the Lords did not do a seasonable thing to deny us a Committee about settling methods of Tryal, &c.* I would not enter upon this matter of the Priests, &c. till the Tryal of the Lords be over. I

† Youngest brother to the Earl of *Lindsey*. He was entrusted by Patent with the disposal of 20,000*l.* per annum, Secret service Money, out of the Excise.

* See the Lords Answer, p. 219.

think it not a prudential Motion to the Lords now, and pray let it alone now.

Sir William Coventry.] As to this of the Priests, your Message may be turned such a way as may give no offence to the Lords, viz. "That the Lords having sent for the Priests, &c. we, supposing it may tend to the Tryal of the Lords, desire that the Lords would communicate to us what discovery they have made that may be useful at the Tryals, &c." This will put the Lords upon giving you such Reasons for it, as may be useful to you, and by it the Lords have no just ground to deny you.

Sir Thomas Littleton.] I find that good nature works not at all with the Lords. It does just nothing by tenderness, and if you are more nice and tender than usual, they will make the bolder with you about the Pardon, &c.

Sir Thomas Clarges.] The whole manner of the Lords Proceedings, since the Plot, seems extraordinary, and I despair of Justice from them. (Whether it be my weakness to think so, I know not.) They have made a Secret Committee to take the Evidence, &c. and it is all about the town as if the Lords were the Prosecutors, and not we. May they not, in this, intercept the King's Justice? And then they may do it in all other things. By those licences no man can be safe. Another thing makes me despair: We have sent to the Lords for a Committee to adjust all disputes about the Tryals, and we are warranted by a late Precedent, in Lord *Strafford's* case; and I am informed, that they do not only deny it us, but in a contemptuous manner will take no notice of it. In this emergency, I think it is fit to take notice of it to them.

Mr Swynfin.] I think you are well moved by *Coventry*, &c. If the two Houses do not agree, you can have no fruit of all your labours about the Plot. It is strange if the Lords should not take Evidence about the Plot; it is for your service; they have communicated it to you. Had not the Lords declared by Vote, "That Impeachments, &c. depending in Parliament, cannot be tryed

out of Parliament," the Popish Lords had been tryed before you met again. I would go the most reasonable way. The Lords have sent for these Persons, &c. and you have sent for Persons condemned (*Coleman*, &c.) and the Lords may do so too. I would therefore send to the Lords, to know what discoveries these Priests have made to their Lordships for your use.

Sir Robert Carr.] I remember not that *Coleman* was examined by Order of the House, &c. after he was condemned; your Journal will show it. I see not that the Lords comply with you in the least, but are still taking away more Privilege from you, as lately in the Money-Bill, &c. You get nothing by gentleness, and the Lords may think to give away all your Privileges.

Sir John Trevor.] I have always admired what the Lords will do in these Impeachments. Shall the Lords go on, and examine all your Evidence by way of anticipation?—There is not one syllable, that the Justices of Peace have taken, of several examinations, by the Lords Order, but what is public. The World knows all, but what your Secret Committee have kept private. It is said, "We must be gentle with the Lords." But if the Lords encroach thus upon us, what shall we be reduced to at last? They would have encroached upon you in the Money-Bill, &c. and if Money may be had without your consent, good-night to your Privilege, and you may shut up shop. I would therefore send to the Lords to know, why, in such an extraordinary way, they have proceeded in sending for these Priests, who are attainted? If the King had done half so much, you would have complained by way of Address.

The King, by the Usher of the Black Rod, commanded the attendance of the House in the House of Peers.

Exceptions were taken at the Speaker's carrying up the Money-Bill for disbanding the Army, which occasioned this Debate following, at the Speaker's return.

Mr Trenchard.] The King may have other business with us besides passing Bills. The Money-Bill ought to have

have the Commons consent for the carrying it up. But as you, Mr Speaker, carried it up, it is your gift of the Money, and not ours.

The Speaker.] When a Bill has passed both Houses, it is to be carried up to the King, that it may be perfected into an Act by him in his Royal Robes. Was there any one word said against it, before I went up? Did any man stand up to move you to make any previous Vote? Had it been so, there had been something to doubt.

Sir *Thomas Clarges*.] You, Mr Speaker, did not know but that there might have been Debates before you had gone with the Bill. I stood up myself, if you had had patience to stay, and I would have given you my Reasons why you should not have carried this Bill up. I never knew, but that a Secretary of State did previously tell us, "That the King would pass Bills, if they were ready." And having no such intimation, I intended to have told you, that you ought not to have carried up the Bill.

Sir *Nicholas Carew*.] It is usual to keep the Money-Bill till the last thing, when other Laws are ready, and till then to lie upon the Table. The carrying up the Bill, in this manner, may be a Precedent, in time to come, that the Speaker may carry up the Money-Bill without any Order from the House, and may be of ill consequence. I desire that it may never be done any more.

Sir *Thomas Lee*.] If you claim that as a Right, the Lords may do the same with any other Bill. After a Bill is finally and fully agreed by both Houses, both have a Right to it, and you have only the Right of presenting it—The Lords may let your Bills lie upon their Table. I know not what you, Mr Speaker, could do in this case, having no directions in it.

Mr *Boscarwen*.] All other Bills (when passed both Houses) are left with the Lords, but the Money-Bills are not. The House having no notice from the Lords that the King would pass Bills, you, Mr Speaker, could not divine that it was the King's intention to call for the Bill. I would enter it into the Journal, as a standing Order for the future, "That the Speaker shall not carry up any Bill,

Bill, till the House have intimation from the King, or Lords, that his Majesty comes to pass Bills."

Mr Secretary *Coventry*.] After the Black Rod had knocked, &c. you could not ask a Question, nor we answer; you are to attend the King immediately. You may make an Order for the future,

Mr *Bennet*.] That word "immediately" made Mr *Seymour* (the former Speaker) go away "immediately;" and when the King had commanded it, &c. he adjourned the House "immediately;" and you set an Order upon your Books, &c. *

Mr *Powle*.] I take it to be the ancient constitution of Parliament, that no Bills pass till the last day of the Session, and then neither this House, nor the Lords, can stop any Bills that are ready, and they ought to be tendered to the King to pass them, or *Le Roi s'avisera*. I know that the usual way and custom is, that when Bills are ready, and both Houses are in great haste to pass them, they send to the King to give him intimation that they are ready, if he please to pass them. If this was not done now, it was through inadvertence somewhere. If you please to pass some Vote in it, to be a rule for the future, I am contented.

Colonel *Titus*.] I take it for granted, that there is no one Act that the Speaker can do, but by Order of the House. Next, how could you know that the King came to pass this Bill, or any Bills, seeing that the King comes to the Lords House on other occasions, and makes Speeches? I would gladly know, how you could know, that the King would pass the Money-Bill? You might have carried it up, to have brought it down again. I would be secured in this matter, for the future, by an Order, and I am satisfied.

Sir *Thomas Clarges*.] Our Money-Bills have usually had compensations; we have now a *Habeas Corpus* Bill that is near ready, and I would have moved you, not to have presented the Money-Bill, till that was ready for passing. You are told "That the Lords may make ob-

* See Vol. IV.

structions to your Bills, though passed both Houses, &c." But the Lords can make none, after notice is given that they have consented. We may stop our Money-Bill; they cannot—But with humble application we may show the King Reasons why we cannot bring it up. I would have an Order made, "That no Money-Bill be carried up without the consent of the House," because this Bill has.

Lord Cavendish.] Your going out of the Chair, &c. was regular; but carrying up the Bill, &c. without consent of the House, was irregular. But for the future, I would have an Order, "That not any Bill shall go up, till Bills of Grievances may be ready too."

Mr Boscawen.] I would have a Committee to examine Precedents, and inspect the Journal about this matter, and make you a Report.

Ordered, That a Committee be appointed to inspect the Journals, and search Precedents, touching the carrying up of Bills; and what previous intimation ought to be given to this House of his Majesty's intention to pass Bills; and from and by whom such notice hath usually been given; and whether the House may debate, after the Message delivered by the Black Rod for attendance of this House upon his Majesty.

The Lords desired a Conference, &c. which was agreed to, and reported as follows: "The Lords do not agree to a Committee of both Houses, because they do not think it conformable to the Rules and Orders of Proceedings of this Court, which is, and ever must be, tender in matters relating to their Judicature *."

Sir Robert Howard.] The Lords have absolutely denied you Conference and conversation, about Methods of Proceedings in the Tryals, and you may for ever be denied it. It will be a strange spectacle to see the Earl of

* Mr Algernon Sidney affirms, "That the above Vote was carried only by two voices, the one side having only fifty-four, the other fifty-two: That, of eighteen Bishops that were present, sixteen were on the victorious side, and only Durham (Dr Crew,) and Carlisle (Dr Rainsborough,) were so humble as to join with the vanquished. That

of these fifty-two, fifty-one the next day protested, and that, he thought, laziness only hindered the Earl of Leicester (who was the other) from doing the same." But if this be true, the Records of Parliament have dropped the names of thirty-two, and have left us only nineteen.

Danly

Danby at the Bar to-morrow, there to arraign your Vote, &c. and all the Counsel for him; and the people admitted to hear it, by pretence of not agreeing with the Lords in this Conference. They that carried this Question of not conferring with you, are resolved to carry the other Question of saving him. They who are against any Method of Proceeding, are against the thing itself; they will resolve this to be a good Pardon, and there is an end of all. Here is the case; Can any man say that ever a Pardon was obtained against the King's Coronation Oath? *Edw. II. Edw. III.* against all consideration of Appeal, &c. Common Nuisance, &c.—Against all those visible things; all pardoned. You desire to argue with the Lords, and they will not agree with you. And now, which way shall we proceed in Parliament, in the declaratory power of Treason? A Pardon will, at the root, destroy any Act of Parliament.

Sir Thomas Meres.] Suppose the Commons say, "Their scaffolds and seats in *Westminster-Hall* are inconvenient," must they not be heard? But in a thing never heard of, *Danby* to go triumphantly into *Westminster-Hall*, and come back triumphantly, and be acquitted in the Lords House, must we not be heard by the Lords as to methods, &c? By this Proceeding of the Lords, all Laws are cut off. This hinders all Questions whether the Pardon be good, or no. This erects such a Judicature as was never before. In the mean time, before you proceed any farther, I would search what the Lords have done.

Mr Sacheverell.] I am really against desiring the Lords to sit this afternoon. The Lords have determined the point; they will have nothing to do with you; and I would make a Vote to have no more to do with them. This is not only Lord *Danby's* case, but the rest of the Lords in the *Tower*. If this be so, let us have no farther correspondence with them; and vote it.

Sir Thomas Lee.] I move you, to search the Lords Journals. If you find it so, then I am for all the things moved for.

Colonel

Colonel *Titus*.] As to all the Proceedings in Lord *Danby*'s case, and the five Lords, &c. I hear the Bishops are likely to sit. This is a novel thing, and contrary to all Precedents and practice. The Bishops are not men of blood, and will be very merciful to the Lords; it concerns us, that Law and Custom may not be changed.

Resolved, That a Committee be appointed to inspect the Lords Journal, &c.

Mr *Sacheverell*.] The Lords have given you no Answer at all to the point of a Lord High Steward, and let the Lords Judicature be ever so great, they ought not to go in an unusual way. To that point they have said nothing. You will find a Protestation entered into the Lords Books, and by that you will see what Lords are for it, and what against it.

In the Afternoon.

Mr *Hampden* reports the search of the Lords Journal.

[Debate.]

Mr *Sacheverell*.] This will not abide any great delay. During all this time of the Lords settling the Order of Tryals, &c. the Bishops become concerned—Another Lord may be assigned Counsel in fortification of his Pardon, &c. Your Committee cannot give you an account of what is done to-day in the Lords Journal; but if you please, I desire, before I give you my opinion in the case, that the matters you sent to the Lords yesterday about, and their Answer, may be read, and then you are ready for Judgment.

They were read accordingly.

Now I see plainly what pass we are at. You have desired a Conference, &c. only to suppose that the Lords will not take any unusual methods; and to that you have no Answer. You next would know, upon what account the Lords desire of the King a Lord High Steward; and to that you have no Answer at all. Next, you have proposed a Committee of the two Houses, to prevent differences and delays in the Proceedings, &c. Notwithstanding all this foresight of yours, this is as if, "Let the Commons do what they will, they will give you no Answer."

swer." You must show your resentment, that the Commons will not suffer the House of Lords to trample upon them. If they will do at this rate, they will strain their power, as they did in the last Parliament—They ordered their Officers to make use of a considerable sum of money which was for disbanding the Army. Perhaps their Judicature is one of the greatest Grievances of the Nation. All they shelter themselves with, is their Judicature; so sacred, that we must not speak of it. There are but two ways to let the Lords know how we resent it, viz. To punish those that appear for *Danby* as Counsel, who are of the same degree with us, Commoners; and to take such methods as have been taken, that no person of the Long Robe presume to plead against your Vote; and if they do, that they shall be esteemed enemies to the Privileges of the Commons of *England*.

Which Motion was seconded by many.

Mr *Boscawen*.] The four Gentlemen retained Counsel for Lord *Danby* were at the door this morning, to have had the Opinion of the House in this matter. By what discourse I had with them, they were not forward to appear in the business. If you do it with the least noise, it is best. Gentlemen here cannot but be sensible of the consequence of the affairs depending betwixt us. I am far from giving up our Right, and yet I would not make a false step in it. Therefore I move, that if any Counsel shall presume to plead, &c. *as before*.

Sir *Henry Ford*.] The Lawyers are in little better condition, than betwixt the upper and nether mill-stone. If the Lords commit the Lawyers to the *Tower* for not pleading, your Vote cannot fetch them out. I would not have them plead without leave of the House.

Sir *Robert Carr*.] The Courts of *Westminster* never assign Counsel against themselves. This will be Counsel of Commons against yourselves. It is not necessary that the Lords should assign Counsel, for two reasons: It is not Counsel that will convince the Lords of the legality of the Pardon. They plead for their fees, and they have better Law near at hand, the Judges. And the Lords will

will not go, I presume, to *Westminster-Hall*, and expect that we shall go and wrangle with the Lawyers.

Sir *Thomas Clarges*.] Your Vote is general, and Counsel are assigned in defence of Lord *Danby*, by the Lords. For Counsel to appear in this case, is for a Commoner to be of Counsel against himself; for all the Commons of *England* are parties to this Impeachment. "All the Commons here" is by a fiction in Law, and it is a just Vote, "That no Counsel be admitted to plead in behalf of this Pardon."

Mr *Vaughan*.] If either House say they will, or will not do a thing, without giving any reason for it, I would not have that failure here. That large Jurisdiction of the Lords was the cause of so much blood from *R. II*'s time to *Hen. VII*. I fear, the time you have spent so long will be lost by this arbitrariness of the Lords. Now for the appearing of the Counsel, &c. If the Commons are represented here, the Laws made here are as much as if all the Commons of *England* were here present. You cannot call all the Commons to give their voices here. When once it is said, "You represent the Commons here, by a fiction in Law" (as *Clarges*) your Bills will be but "fictions." Without injustice to the people of *England*, you cannot (for your honour) be present when the Counsel are at the Bar, to plead *Danby*'s Pardon; and I insist positively upon the Vote moved for.

Lord *Cavendish*.] When Lord *Strafford* was arraigned for Treason, he was so far from pleading a Pardon, that he wrote a Letter to the King to pass the Bill of Attainder. This is widely different from *Danby*'s case. In Dr *Shirley*'s case, a Vote passed of this nature, and the Serjeant took the Counsel into custody *, &c. and what was the consequence? We ended in a Breach; and that, I fear, will be the consequence now, and is the thing that *Danby*'s Party in the Lords House aim at; which will be the most fatal thing in the world. Before this Vote pass, I would see a little, &c. lest things come to the last extremity; and vote only, that no Counsel presume to plead, without leave of the House.

* See Vol. III. p. 226.

Mr *Rushworth*.] In the case of Sir *Ralph Ferrers*, 4 R. II. *Resolved*, "That he ought not to have Counsel of any earthly creature, but of God himself, in case of Treason." 5 R. II. Sir *Ralph Coggan* impeached, &c. was denied Counsel—28 Hen. VIII. the Duke of ***** had Copies of his Charge, but no Counsel, &c. In the case of Lord *Middlesex*, he was denied Counsel; but that was to Misdemeanors only. Lord *Bristol* was accused 2 Char. I. To the Earl's Answer, Counsel was allowed him; but the King sent a Message to the Lords, "That Counsel was not to be assigned in Felony and Treason." And the Lords offered the Order of 21 James, and said, "They had assigned Counsel, before the King's Message came." The Judges were not advised with; but these were plain matters of Misdemeanor, but not Felony and Treason, wherein they could not have Counsel, by the ancient and fundamental Law of the Land.

Sir *John Trevor*.] Several Precedents have been cited to you; give me leave to make some observations upon them. The Lords cannot assign Counsel in any Impeachment, without the leave of the Commons. The case of *Ferrers* was this: He was impeached for Treason; which Treason was contained in several Letters, found by a beggar, of his Correspondences in *France*, &c. which were afterwards found to be forged (See *Cotton's Records*, 4 R. II.) He was denied Counsel, &c. *Coggan's* case was a Riot upon the Knights of St *John of Jerusalem*; it tended only to Treason, and he had no Counsel allowed him. The *Cambridge* Riot, where the Townsmen seized the University Treasure, Treason; they were not allowed Counsel. In the Earl of *Bristol's* case, which was not an Impeachment, the King laid it down as a fundamental Law, "That in Felony and Treason no Counsel was to be allowed, &c. but that Parliament was dissolved. By *Hobart's Reports* (printed) the Earl of *Bristol*, by Law, could have no Counsel. The prisoner is always supposed as learned as the Jury. But I would ask, where matter of Law has been alleged by the prisoner, and Counsel has not been assigned him? The Earl of *Danby* ought not
not

not to have Counsel, and he ought to have pleaded his Pardon before you, face to face; and if it be otherwise, it is Error, and may be reversed. The Lords cannot take the jurisdiction to themselves, without the Commons, and therefore your Vote is grounded on Reason, and it binds without doors as well as within, and is no "Fiction in Law," as it is called by some. If you make a Vote that no Counsel shall appear, you conclude yourselves generally. I would have it, "That none shall appear without leave of the House."

Mr *Williams*.] I take the case plainly, as the Common Law stands, that whoever is at the Bar for his life, ought to have Counsel for matter of Law. And it is the Rule of Law generally, that he cannot have Counsel; but any Person indicted of Treason or Felony, in matter of Law cannot be denied Counsel. The Law is the same in Parliament, and out of Parliament; and whilst we are hunting down one man, let us have a care that we do ourselves no hurt. *Danby* is to stand and fall by his Pardon; and he is to live and die by it. I am not Lawyer enough to decide the matter, that here is Law in it as to this particular point. Now, whether the Lords can assign *Danby* Counsel, without the leave of the Commons? Take it in an ordinary case, for you must make an analogy: Have the accusers any hand in assigning Counsel? It is the Court that is judge of Law, and they assign Counsel. But it is said, "The Court is Counsel for the Prisoner;" but they may assign Counsel. We all know, the Commons have no hand in giving Judgment; it is the Lords that do it. Therefore I take that to be the reason why they may assign Counsel, and no others. I admit, that it is a more solemn thing than an Indictment of a Grand Jury. This difference is only in degree, not essentially. "But will you trust the Lords to assign Counsel?" say some. I answer: As the Lords are trusted with the Judgment, so they are trusted with every thing that leads, and induces to it. You may as well say, how can a Commoner be a Witness for a Lord? as

deny him Counsel. You do not eat and drink for all the Commons of *England*. I take it, that the Lords are proper Judges, and of all things that induce to it. If there be Right to *Danby* in having Counsel, let Right be done him.

Mr *Vaughan*.] Consider what *Williams* says, "It is the Right of the Lords to assign Counsel, &c." Let him give an instance, when ever the Lords assigned Counsel out of them who are the accusers.

Mr *Williams*.] I spoke to the necessity of the thing. *Danby* must have Counsel out of the Commons, or none. The Court may assign him, for Counsel, any man whom they think fit.

Sir *John Trevor*.] I have had the honour to serve the King, as Counsel. I, by my Oath, am not to plead an untruth, and if I declare an opinion for the Prerogative that I think is not so, I am perjured.

Sir *Thomas Lee*.] The Lords are now setting up their jurisdiction. In all causes, and in all time, courses of Parliament and *Westminster-Hall* have been very different. It is a strange thing, that a point of Law should be found out, by two or three Gentlemen, that neither the Lords, nor Commons, can find out. The nature of your accusation of this Lord is from the notoriety of the thing; every man is his Accuser and Prosecutor. There is a great difference, in a suit, between the King and the subject. There can be no benefit here to the Prosecutors, in the Impeachment. I make no doubt, but that the Lords may assign Counsel for their information. Lord *Mordaunt* escaped, &c. because the Commons would not proceed, &c. As it is now, I fear this way will destroy all Impeachments, and therefore I am against it.

Sir *Robert Howard*.] I have but one word to say to what we are to do. We are driven to a necessity to defend ourselves from as great a blow as we can apprehend. I will say something new to you, not yet observed. If a man be impeached at the Bar, and if matter of Law arise, the Prisoner may have Counsel. But if there be so extraordinary a thing as this Pardon, so got, and snatch-
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ed from the King, and all turned into a Point of Law, it is strange.

Mr *Garroway*.] Do you remember what you have voted? Are you afraid of what you have done? If these Lords have Counsel assigned, be not afraid of what you have done. Let us leave our cause fair to the world, and trust God. If the Lords will retreat, they may; they will not hear you as to method of Proceedings, &c. and now you will not defend yourselves. I would say, "That if any Counsel plead in justification of this Pardon, they shall be esteemed Betrayers of the Privileges and Liberties of the Commons of *England*."

Mr *Powle*.] It is the greatest mistake in the world, to tye us up to Arguments of inferior Courts, and the greatest mistake, to presume, that this House will do any injustice, to deprive any man of his just defence. When there is just cause to have Counsel, this House will allow it to the greatest offender in nature. No Commoner ought to plead against what we have done, without our licence. But now you have made a step in this matter, never admit this to be done by the Lords, solely, and singly, upon their own power only, without admitting you to Conference, to settle methods of Proceeding in the Tryals of the Lords, &c. I see not why we should go to any extreme Votes to occasion a Breach betwixt the Lords and us. But if there be such a strange fate over us, let us not be the occasion of it, for the greater satisfaction of Country, that we have done nothing precipitately. Lord *Danby* is not so low, but that he has friends; therefore I desire, that, in our Proceedings, we may not do that which carries defiance in the forehead of it to the Lords. If you vote, therefore, "That no Commoner presume to plead in defence of Lord *Danby*'s Pardon, without the consent of this House," you do that in substance which has been proposed you in words.

Resolved, That no Commoner whatsoever shall presume to maintain the validity of the Pardon pleaded by the Earl of *Danby*, without the consent of this House first had; and that the Persons so doing shall be accounted Betrayers of the Liberties of the Commons of *England*.

[*Resolved*, That the Answer delivered by the Lords this day, at the last Conference, tends to the interruption of the good correspondence between the two Houses.]

Saturday, May 10.

Mr *Sacheverell*.] Mr *Bertie* did acknowledge a great sum of Money (at the Committee of Secrecy) which he received and accounted for in an extraordinary manner, which never came to the Exchequer; but he says, "He has the King's hand, for his discharge." He refuses to tell the Committee what service the 200,000*l.* he received was for; he says only "for secret service." I would therefore command him to produce those Books of Account of secret service, and how he disposed of the Money. I know he has acknowledged such a Book to have been in his hands.

The Speaker interrogated Mr Bertie, at the Bar, thus.] Mr *Bertie*, the House has been informed of great sums of the King's Money, which have come to your hands, and that no account has been given of it, in the place where the King's Revenue is accounted for, in the Exchequer. The House would know, how you have disposed of those great sums to Members of the last Parliament, and if you have receipts for them? The House would have you produce your Books, that they may see how you have disposed of that Money. The House is particularly informed, that you have struck Tallies in the Exchequer for 200,000*l.* The House would know, how you disposed of it. The general name of "secret service" will not serve turn; you must produce your Books, and the acquittances, else you will fall under the displeasure of the House.

Mr *Bertie*.] Mr Speaker, I am sorry that the House has commanded me to give them an account of what I have made no account of. I hope you will not command me to disclose secrets of the King's, without his leave.

The Speaker.] It is not fair for you to entitle the King to the mismanagement of Money and misemployment of it—it is not a service to the Nation.

Mr *Bertie*.] I have accounted with the King, and I hope I am fully discharged of the Money.

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The Speaker.] The House well knows, that the King has not time to take particular accounts of his Money. If the King has signed the Book, let us see that Book.

Mr *Bertie* then withdrew into the Speaker's Chamber.

Mr *Hampden* reports, from the Committee, the Reasons to be offered at a Conference, [as follows :

“ The Commons hope that your Lordships will not proceed to the Tryal of the Lords, &c. till things are adjusted betwixt the two Houses, as they desire at all times to keep a good correspondence with the Lords, so most especially in this conjuncture, when the most heinous delinquents are to be brought to Justice : And therefore, for Answer to the last Conference, the Commons have commanded us to say this to your Lordships : That your Lordships do not offer any Answer or satisfaction to the Commons in their necessary proposals amicably offered, by way of supposition, that they might have been confirmed therein, by Answer from your Lordships, that your Lordships do intend, in all the Proceedings upon the Impeachments now depending before your Lordships, to follow the usual course and methods of Parliament.

“ And farther, that your Lordships have not given the least Answer or satisfaction to the Commons, concerning your Lordships Address to the King for a Lord High Steward, though the Commons proposed their desire of satisfaction in that matter in as cautious terms as could be, to avoid all disputes about Judicature.

“ The Commons, to avoid all interruptions and delays in the Proceedings against the Lords impeached, and the inconveniences that may arise thereby, having proposed to your Lordships, that a Committee of both Houses might be nominated, to consider of the most proper ways and methods of proceeding upon Impeachments, your Lordships, without any Reason assigned, (save only that you say, you do not think it conformable to the Rules and Orders of the Proceedings of this Court) have refused to agree with the House of Commons in appointing such a Committee, though not heretofore denied, when asked upon the like occasion, and at this time desired purposely to avoid disputes and delays.

“ And therefore the House of Commons have commanded us to acquaint your Lordships, That, things standing thus upon your Answer, they cannot proceed in the Tryals of the Lords, before the methods of Proceedings be adjusted between the two Houses.”]

Sir *Robert Peyton* reports an Address to his Majesty, for the Militia to be in Arms, &c. during the Tryals of the Lords, &c. [as follows :

"We your Majesty's most dutiful and loyal Subjects * * * * * and Commons, in Parliament assembled, taking notice of the great resort of the multitude of *Jesuits*, Popish Priests, and other Popish Recusants, to the Cities of *London* and *Westminster*, and parts adjacent, and their obstinate continuance there, in contempt of your Majesty's Laws, and Royal Proclamations in pursuance thereof, and considering the great dangers that may ensue thereby, especially at this time of the approaching Tryals of the Popish Lords now Prisoners in the *Tower*, in whose behalfs some desperate attempts may be made; for prevention thereof, and for the better securing your Majesty's sacred Person, we most humbly beseech your Majesty, That you would be graciously pleased to give order, that the Militia of *London*, *Westminster*, *Southwark*, the *Tower Hamlets*, and the Counties of *Middlesex* and *Surry*, may immediately be raised and put in a posture of defence, in such proportions, and for such time, as your Majesty shall think fit."

The Lords concurrence was desired.]

Sir *John Trevor* reports, from the Conference with the Lords, a Petition from the Earl of *Danby* concerning his Counsel; "That they durst not appear to argue the validity of his Pardon, by reason of a Vote of the House of Commons:" And that their Lordships desired to know, whether there was any such Vote as was alleged in the Petition.

Mr *Garroway*.] Whether this Paper be an original, that the Lords gave you at the Conference, or not, it is no matter; but you may take a Copy, and deliver the Paper back again.

Mr *Sacheverell*.] I conceive that now you are to consider, whether we should give an Answer to the Lords, or whether this House can tell, whether *Danby's* Counsel has given him such an Answer in matter of fact? When the Lords can give you satisfaction to the desires of this House for a Committee to adjust matters of the Tryals, &c. by way of good correspondence, then it is time to proceed.

Mr *Vaughan*.] Look over the Journals from *Edw. III's* time, and you will never find that we ought to be asked Questions at a Conference. In plain terms, this is an accusation against the House of Commons, and you are asked, whether you are guilty, or not guilty? In Sir *John Fagg's* case, which Gentlemen may very well remember, you were

were asked at a Conference, whether it was by the Speaker's Warrant, that the Counsel who appeared, &c. were attached *.

Mr *Powle*.] I remember that Question was asked at a Conference, and then it was said, "That the proper way of asking a Question was by way of Message, and not by Conference." But I would not have you take that for granted that it is not parliamentary to ask Questions; for it is so; but then by a Message, and not at a Conference.

Sir *Thomas Meres*.] A Question that we like not we let pass, and make no Answer to, and this Question will keep cold.

Sir *Thomas Littleton*.] I would not let this thing altogether sleep, but would order some Members to search the Journals, to see whether there have been such Proceedings in the like cases.

Colonel *Titus*.] I doubt not, but a Question may be asked from either House. The Lords desire to know whether such a Vote has passed this House, or no? As much as to say, "If you have, then we'll take a course with you." This business being over, I will acquaint you what Money has been issued out of the Exchequer for secret service, in Lord *Southampton's* time. By comparing estreats of other years, all the expence was 34,000*l.* and in this Treasurer's time, in six Terms has been expended 231,600*l.* This I have not upon hearsay, but good information. Of this sum, there has been paid to Mr *Charles Bertie* 197,000*l.* This he cannot deny. We have traced it so far as to find that *Bertie* has a Book, wherein all this is set down. He answered the Secret Committee, "That without leave of the King, he would not produce the Book." If the power of the House cannot command him to bring this Book by to-morrow morning, &c.

Mr *Sacheverell*.] There were more Books than this that we are informed of. Mr *Bertie* said, "That this Money was paid, without account, to the Exchequer: He accounted for it to the King, and has only his hand for it."

* See Vol. III. p. 151.

Therefore, press him to tell the House, how many Books there are, and in what manner he is discharged for the Money?

Sir Thomas Clarges.] There is one Book we can prove, by one that gave it him.

Mr Bennet.] Tell him what you will do with him, in case he refuses to inform you, &c. It is his embezzlement of the Money, and he has cozened the King and the Nation, if he refuses to inform you; and a good Bill will make him tell you how the Money was disposed of, and refund too.

Mr Bertie again at the Bar.

The Speaker.] *Mr Bertie*, I hope you will give speedy and sober Answers to the House, who are satisfied that great sums of Money have gone through your hands for secret service, and particularly that you have struck Tallies for 200,000*l.* in a year.

Mr Bertie.] I disposed of none, and had no Tally. I remember not who I assigned it to. I have adjusted it with the King, and I made no account of it, and am discharged by the Privy Seal, that enabled me to receive it without account.

The Speaker.] Was any of it disposed of to any Members of the last Parliament?

Mr Bertie.] I remember not lending, paying, or assigning of the Money. It may be, it was for lands the King bought of some Persons. Usually, I presume, I took acquittances, and I delivered them up. I keep no Book, nor accounts of them. I delivered them up about *March* last, and am fully discharged. To what and to whom I paid the Money, I have no account about me. I needed no discharge at all, being sufficiently discharged by the Privy Seal. About *March* was the last time I had the Book, and then I delivered it to the King's own hand, and I know not who the King gave it to, to keep. It was in his Closet, and nobody was present.

And being interrogated farther about the Books, &c. he said,] I have no Books, but some short accounts of Papers which I stiched into Books. My discharge is in the Exchequer, and the King looked upon the particulars of the account, and said "he was satisfied." *He withdrew.*

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is such a Book, and it was delivered to *Bertie's* own hand. The Honourable Person, Sir *Robert Howard*, can satisfy you in it.

Sir *Thomas Clarges*.] It does appear, that the Warrants for the Money were signed by the King, they were procured by Lord *Danby* alone, and drawn by this Gentleman, and not by the Secretaries of State, whose Office it was to draw Warrants for Privy Seals. Lord *Danby* drew all these sums by his procurement. He was Secretary himself.

Sir *Robert Howard*.] This very time the Warrants for secret service were procured by Lord *Danby*, and countersigned by himself. (He took up the Secretaries places; they had little to do.) The Privy Seal was granted, and the sum is right. As for the manner of the thing, such a thing has been done for secret service without account, to the end that spies may not be known in the Exchequer. If it be a free gift, it is so declared in the Exchequer. The Money granted for secret service, is true to the proportion told you here. If the King should send an account into the Exchequer, he would tell tales of all, and therefore it passes without account. The thing is at the bottom. *Bertie* tells you, "he has a Privy Seal, and will give no account." It is certain, that no man is so unwise, but he will keep notes of what he does, and there were original directions to whom this Money was to be paid. He gave his own acquittance for the Money. This is a thing of an extraordinary nature, and will hardly pass without account, when you come to that part of it.

Sir *Thomas Player*.] It is a pity this Gentleman's name is not *Osborne*. *Danby* committed Treason, and says, "the King bid him do so." And this Gentleman is charged with disposing of Money to Members of the last Parliament, and such vast sums for secret service, and he tells you, "That he did it by Order from the King." To help to destroy the Nation by Order from the King! I move you therefore, that you would let this Gentleman be secured, because he charges the King, &c. and that you would

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would address the King, "That he may bring you an account of this public Money; that this House may take some course to prosecute this Gentleman for embezzling the public Money."

Mr *Powle*.] Mr *Bertie* has told you, "He disposed of the Money, &c. and had no particular directions from the King." There is a case in all times, when Money is to be issued out for secret service, and is not for in accounted the Exchequer, and by slight account passed over.

Mr *Bertie* was called in again.

The Speaker.] The House is dissatisfied with your present Answers, and have certain knowledge of great sums, and you could not pay such great sums without a receipt. The House will not take advantage of your present Answers, but have sent for you again, and expect a directer account from you. By what warrant could the Treasurer countersign the Privy Seals, and know not the sums?

Mr *Bertie*.] I have no Book, and I cannot inform you, else I would really produce the Book. I had directions from the King himself, sometimes by the King's warrant, and sometimes by my Lord Treasurer himself. The King himself sometimes directed me the payment of several sums.

The Speaker.] But here have been great sums paid.

Mr *Bertie*.] I hope the House will not require me to tell you, without the King's leave. By the King's Order, I paid the Money; it is impossible for me to give you an account for three or four years, of sums I have paid. If I had the King's leave and command, I would answer, &c. but I never discovered the King's secrets without his command; and the Treasurer's orders were in pursuance of the King's commands. If the King pleases to give me his commands, I am ready to inform you. In that Book, of all the particulars of secret service, I trusted nobody to write it. I wrote it fair, and, I confess, I took a copy of it. The acquittances were my vouchers, and who signed them I humbly desire not to declare, without the King's leave. No servant of mine did ever do any perfect thing, but only took Memorandums, when I was in a hurry of business. I had the payments, &c. always in notes, and I needed no cashiers, and had little trouble in telling Money. Scarce a man that deals in *Lombard-street* but has had notes of me, and most part of the Money I paid in notes. I do not remember the Goldsmiths names—I think I have had of Mr *Duncombe*—and sometimes notes upon Goldsmiths

Goldsmiths whom I never saw in my life, nor spoke with. *He withdrew.*

Sir Samuel Barnardiston.] I would advise you to examine the Goldsmiths Books, *Duncombe's* and the rest. You may know much.

Sir Robert Howard.] Since these two years *, there has been issued out of the Exchequer, for secret service, &c. 252,467*l.* 1*s.* 9*d.*

Mr Garroway.] *Mr Bertie* does not scruple to acknowledge the receipt of the Money, but he will not tell you to whom it was paid, without the King's leave.

Mr Williams.] These things reflect upon the King's honour, and I move, "That *Mr Bertie* may be committed to the Serjeant, till you can consider what farther to do with him." All is laid upon the King. Men are come to that degree of confidence, that it will never be well till you make them great examples. The last Parliament, the Nation was mightily induced to the *French War*, by the encouragement of some of your Members, and you had a Poll-Bill for the use of the Navy, and the Officers of the Navy treated with the Merchants for several things, and you were told, that "that Money was in the Navy-Office, in a room by itself." As soon as they had got the Merchants goods, this *Mr Bertie*, by his tricks, paid them nothing, and converted the Money to another use; and in the condition you are now in, you have occasion for credit, and you lie exposed to all your enemies, and he has mispent your Money. Look into the Records, and you will find one Article against the Duke of *Somerset*, "That he had corrupted Parliament-men." It was one of the chief Articles, &c. and shall we be afraid to do less? Nothing contributes more to the destruction of the Nation than this. Where a man has done so ill, I would make no scruple, by the legislative Authority, to cut him off. Lay your hands on your hearts. I think this man is guilty, &c. who can inform you, and will not. I would therefore imprison him, and when such men as he can

* In the Journal, "from *Lady-day*, 1676, to *March 20*, 1678-9."

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inform you, and will not, I would squeeze the orange, and make them refund.

Ordered, That Mr Charles Bertie be committed to the Custody of the Serjeant at Arms attending this House, for his contempt of this House.

[*Ordered*, That the Officers of the Ordnance do attend on Monday Morning next, to give this House an account touching the Train of Artillery and Ammunition that are ordered to be shipped for *Portsmouth*.]

Sunday, May 11,

The business of this day was, to take into consideration that part of the King's and the Lord Chancellor's Speech which relates to "the best ways and means of preserving the life of his Sacred Majesty, and of securing the Protestant Religion, both in the Reign of his Majesty and his Successors."

Several interruptions happened to this day's Proceedings, which seemed designed.

The first was from one Mr *Mekennis*, who pretended himself to be a *Northamptonshire* man, his Parents of that County, both dead, and himself lives in *Northamptonshire*. He was habited foldier-like. The Speaker asked him, "What he had to say in relation to any discovery of the Plot, or against the Lords in the *Tower*?" He then spoke to this effect: (*As near as the Compiler could collect, being remote from him, and he spoke not very loud.*)

"I have nothing to say relating to the Plot, nor the Lords in the *Tower*; but I have something to say of importance, as I intimated in my Letter to the Speaker; and I shall be very short in what I have to say. God alone knows how well I wish my Country and Mankind, and for that I am come hither. I come not in my own name, but in the name of Almighty God. It has pleased God to raise up a great Prophet in *Germany*, who has foretold of the great work of God to be performed in this age, and at this time. God has sent to destroy the House of *Austria*, and all their accomplices in idolatry. The Prophet was sent to those Princes, (and they are but men) to destroy idolatry. They would not go on in that work, so they have been slain and destroyed without mercy, and their Countries overcome—The next thing I come to is, how well the Papists, all the world over, have deserved this Judgment, who have behaved themselves rather like wild beasts, than men"—*Here the Speaker interrupted his impertinence, and suffered him not to go on, and he was taken away by the Serjeant, who was directed to let him go for a mad-man.*

Mr

Mr *Blunt*, a Member, who brought the Letter from the said *Mekennis*, and who brought him to the House in his coach, desired the House "not to impute this impertinent interruption to him; protesting he knew nothing of the man, nor what he had to say; but when a Letter to the Speaker was delivered him, with a sober introduction, of "matters of import, &c." he thought it his duty to deliver it to the Speaker, especially when the person he had it from was ready to appear at the Bar *."

This interruption thus past over, another came from the Lords to desire a Conference, "in matters relating to the Tryals of the Lords in the *Tower*;" which could not parliamentarily be denied, though it was foreseen, that this Conference would produce a free Conference, and so consume most part of the day thereby; which, in the end, it did; so that about three of the clock in the afternoon, (all things for that time with the Lords being over) with great impatience the business of the day was called for, which the better to introduce, a Report was called for, from Mr *Treby*, relating to the Duke of *York*'s correspondences with the Pope, Cardinals, and other *Romish* Ministers, at *Rome*; particularly with one Father *Gifford*, and Father *Sheldon*, which mostly consisted of "his zeal for the promotion of the Catholic Religion, and carrying on the great work." But some Letters seeming to doubt of the Duke's resolution *a faire le coup*, (to give the stroke, or do the deed,) which, by the coherence and subsequence, could have no other meaning but upon the King, and doubting that his good nature would be prevalent upon him, the Earl of *Peterborough* was to be made use of, with such arguments as should be prepared to induce the Duke to it. The Letters were generally full of desperate touches relating to the King's Person, the Ministers of State, who, and who not, for the design; of dissolving the last Parliament, calling a new one, and a model of corrupting Members.

Then Lord *Russel* informed the House of another Letter, of a more desperate style and matter than any of the rest, which some days after was found and reported.

Then the Debate was thus opened by

Mr *Bennet*.] Mr Speaker, we have trifled away too much time to-day; pray, let us improve the rest, and do our duty. Seeing that the Duke of *York* is gone out of the Kingdom, that he may not bring Popery with him to be established at his return, I will make you a short Motion, viz. "To make an Address to the King, that the

* This affair is not mentioned in the Journal.

Duke may not come over again, without the consent of the King and the two Houses of Parliament; and that we will stick to the King with our lives and fortunes against him, or any of the Popish party that shall attack us."

Mr *Pilkington*.] I would humbly pray the King, "That the Duke may come over, that we may impeach him of High Treason."

Sir *John Knight*.] It is impossible that the Protestant Religion should be preserved under a Popish Prince; as inconsistent as light and darkness. The King's Coronation Oath is to maintain Religion, and that is the Protestant Religion. The King's subjects are bound by Law to take the Oaths of Supremacy and Allegiance—*Rex nunquam moritur*. We are under all these obligations to a succeeding King, and how can this be reconciled to the King's gracious offers in his Speech? How impatient are the Papists till the King be out of the way, that the Protestants may be destroyed! And then the Papists are the only true subjects, as *Coleman's* Letters tell you. How is it possible that the Kingdom should be satisfied under these oppositions so contrary? O Lord, what will the people say to us, if we do nothing? If the Pope gets his great toe into *England*, all his body will follow. Something must be done, but I dare not venture to propose what.

Mr *Dubois*.] The King offers us many gracious things in his Speech, &c. and somewhat more, viz. "To secure the Protestant Religion." The King's life will be so much the more in danger, by how much the Papists think their case desperate. There is no way to defeat their execution of this Plot, like taking away their hopes; and unless, by some Vote, you determine the Succession, you will never put the Papists out of hopes of accomplishing their design.

Sir *Nicholas Carew*.] I should be glad to be shown any bonds and fetters, that a Prince, when he comes to the Crown, shall not easily break. I think you are well moved to address the King, "That the Duke may not return into *England*, without the consent of King, Lords, and Commons."

Mr

Mr *Williams.*] I am against proposing to the King to do what he cannot without Law. That may recoil upon us on other occasions. In what the King can legally do, I will go along with you; but this Address moved for, does plainly import banishing the Duke. Any other subject may be banished by such an Address against him. Go on therefore legally and regularly, and I will go with you, to banish the Duke by way of a Bill.

Mr *Goring.*] I do not agree with *Bennet*, (who made the Motion, &c.) because I have heard him angry that the Duke was banished by the King's Letter.

Mr *Bennet.*] I was for the Duke's being sent away, because I believe he is a Papist.

Mr *Goring* took *Bennet's* words to himself, as if reflected on to be a Papist, and said,] I am as good a Protestant as *Bennet*, and I require satisfaction. *But the thing passed over as a mistake.*

Sir *Geo. Hungerford.*] I know no Law that can bind in this case, unless we can tell who shall be Prince of *Wales*. If you do any thing, you must appoint a person to succeed the King; and I can never think that the Protestant Princes will join with us in defence of our Religion, unless a third person be named to succeed to the Crown—Then the *German* and *French* Protestants will join with you, and there is a million of them in *France*. We ought to do something materially to secure our Religion, and it must be, either that the King may have an Heir to succeed him, or a third person must be named. As long as the Duke is Heir to the Crown, the Kingdom is unsafe; and I believe that the Queen will never be capable of children; for when she came into *England* she had something given her, to be always a red-lettered woman. But something must be done.

Sir *Robert Markham.*] Surely there is something the Duke of *York* affects, more than the Crown of *England*; and you can do nothing more favourable to him, than by a Bill, "That he should not return into *England*, without the consent of the King, Lords, and Commons.

Sir

Sir *Thomas Player*.] I join with the Motion that has been made for a Bill for an eternal Banishment of the Duke of *York* out of *England*; but yet, that it might go farther, I would pursue the great end of our sitting to-day, "To consult the safety of the King's Person." This Bill will not set the King safe; therefore, besides the Duke's Banishment, I desire, "That he may be excluded from the Crown of *England*, and all Papists whatsoever (as I am sure they may be) by Law." It is most visible, by the Report of the Letters you have heard to-day, what danger the King's Person is exposed to, and from whence all the dangers the King has been in (from which he has miraculously escaped) do come; which is, from the prospect of a Popish Successor. I will give you an instance in the Crown of *Sweden*: They could find no better way to preserve their Religion from the attempts of Papists there. When Queen *Christina* of *Sweden* changed her Religion, she parted with her Crown. Though she would have kept both, yet she surrendered her Crown, because else they would have taken it from her by Law. And you may make your Laws strong enough to exclude a Popish Successor. One thing I cannot understand yet; why, by Letters from all parts of the World, persons are invited to make haste out of *England*, "for before the latter end of *June* last great things would be done." Till the Tryal of the Lords, nothing will be substantially secure to the King and Kingdom. The offers made to you by the King, in the Chancellor's Speech, are but fine things; they will not do this great work. I propose, therefore, "A Bill for excluding the Duke of *York* by name, and all Papists whatsoever, from the Crown of *England*."

Sir *Edmund Jennings*.] You have the greatest thing upon your hands that ever was in Parliament. It has been moved, "for a Bill to exclude the Duke of *York* from the Crown." All the Laws you are making cannot attain your end. I said, in the last Parliament, "That the Duke being a Papist, you could have no security for the Protestant Religion." But banishing the Duke will
not

not do your business. If you have any Papists in *England*, you will never be secure; therefore I propose a Bill, "That all Papists that will not conform to the Church of *England*, may have liberty to sell their estates and be gone, never to return more." I take it for granted, that as long as any Papists are in *England*, Religion can never be secure; they will be always practising amongst all Dissenters, and factious Priests and *Jesuits* will be at the head of them. If there be no Papists left in *England*, what danger could there be, if we had a Popish Prince? This may be objected to, as a hardship and severity upon them. I answer, that, as of the two evils the least is to be chosen, so of two hardships the least is to be chosen. The Papists, by this Plot, would have banished thirty or forty times as many Protestants out of the world. How can this be a hardship? They may go where they will, and live where they will. Two thirds of their estates are forfeited to the King already, and their persons are subject to imprisonments already, by refusing the Oaths, &c. As to fears of depopulating the Nation by it, it would be much more depopulated by their bloody massacres, which they are continually contriving. But say some, "Who would buy their estates if they must be gone?" It is answered, their estates may be settled in the Crown, by purchase, by Act of Parliament, and by this way you may keep Popery from coming in again, and you may be sure the Crown will never part with such a Revenue. But how shall the King have Money to purchase these lands? The Hearth-money may be sold, and that will gratify the people; and if that will not reach it, the Nation, I believe, will willingly supply the King for so good a purpose. Some will say, "This will take away all the Money out of the Nation;" but we know that the greatest part of the Papists Money goes already out of the Nation, to maintain their Monasteries, and designs, and education of their children, and so, in effect, it goes to the Pope already—*He was taken down to Order by Sir Thomas Meres, who said,*] There is another Question now on foot, and the Gentleman's discourse is not

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directed to the Debate of the matter. This Gentleman has talked to me above a year ago of this, and this might have been proper enough at the opening of the Debate.

Colonel *Birch*.] It had been well if I could be showed how our Religion and Property might have been secured, without this Bill proposed—If so, I might alter my opinion of that Bill, and what must bear it company. If we can have no safety by a Popish Prince, it is your duty to take some resolution. Whilst the Law of the Militia is in being, which obliges a declaration, &c. we cannot fight against any commissioned by a Popish Successor. When it is their interest to do a thing, the desperate Papists will do it, and till you change the Papists interest to keep the King alive, you do nothing. Take quick Resolutions, pray, for the safety of the King, this, or any other way.

Mr Secretary *Coventry*.] How will that word “secure” be interpreted? If *Birch* means “out of danger,” I know not how the Government can be “secure” under either a Protestant or Popish Prince. I think, the King’s Person is to be considered how to be preserved, which is the proper consideration of the day, as well as the rest that has been moved, and to show the Papists, that it is not their interest to take the King away by violence; and what better way to do it than that proposal in the Chancellor’s Speech, That the Papists may be in ten times a worse condition by doing it than they were before? If the Catholics be under a Popish Prince that cannot pardon them, they are in a worse condition than under a Prince that can pardon them. The propositions I have heard moved to-day are the most ruinous to Law and the property of the subject imaginable. Will any man give the Duke of *York* less Law than the worst Felons have, to banish and disinherit him without so much as hearing him? The Precedent will be the greatest inconvenience to ourselves in the world. Consider, the King is vigorous, in very good health, and but a year or two older than the Duke; the King is not of such an age but that he may have children, and the Duke is not so settled

settled and grafted into the *Romish* Religion, but that he may return to our Religion again. Acts of Parliament, we know, have not kept Succession out of the right Line, but brought in blood and sword. Has our King the Prerogative of the Conqueror, pretermitt his son *Robert*, and place the Succession in *William Rufus* and *Hen. I.*? Show me one man excluded the inheritance of the Crown by Act of Parliament, that had Right of descent, but has come in again. Must you banish a young Prince, and a young Princess? He is now abroad, and may procure help to contend his Title to the Crown, to the end of the World; and no Prince that ever came to the Crown, by a wrong Title, but must maintain it by a standing Army. Queen *Elizabeth* went through so many great things, only because *Mary* Queen of *Scots* laid some Title to the Crown, that nothing but her life would satisfy Queen *Elizabeth*. In *Hen. VII.*'s time, what terrors did a *Perkin Warbeck* put him in, and shook the very Kingdom! Think, by putting the Duke of *York* by, in the Succession, what you will intail upon your posterity! You will put him upon desperate and irrecoverable Counsels. The King has not yet told you what he will grant more than he has declared in his Speech, nor what he will not grant more—But pray run not upon these extremities before you have well considered of it.

Mr *Hampden*.] For us to go about to tie a Popish Successor with Laws for preservation of the Protestant Religion, is binding *Sampson* with withes; he will break them when he is awake. The Duke of *York* is the presumptive Heir of the Crown, indeed; but if a man be likely to ruin the estate he may be heir to, we disinherit every day. But I find it a principle amongst a great many, "That if the Prince be great, it is no matter how low the People are, if his greatness be kept up." I think that a Prince is made for the good of the people, and where there is a Popish Prince that may succeed, I think we ought to secure ourselves against that Succession. There is great inconvenience that may be assigned in every proposal I have heard to-day, but there is the least inconvenience in

“ a Bill to exclude the Duke of *York* by name from the Crown of *England*,” and therefore I move for it.

Sir *Hugh Cholmondeley*.] Those who think, that, by Law, we cannot bind a Popish Successor from introducing Popery think too meanly of the Laws of *England*. Without delay, I would make Laws to defend ourselves and Religion, in case a Popish Prince should attempt it, and to put us in arms against a Popish King too. We shall have sufficient on our sides. But what could the King have reasonably offered more than in his Speech? Put the Duke by the Succession, and where shall it go? Cannot we make Laws to hamper a Popish Successor? We shall lose all, if we grasp at more than we can hold. I move, therefore, “ That we may prepare an Act of Parliament, made upon the offers of the King in his Speech, without delay or loss of time.”

Major *Beake*.] In this great point our very souls are concerned. Now the Question is, “ What method or course you will take to prevent a Popish Successor to the Crown.” Many Motions have been made, but I will inform you of a thing in fact before you. Royal Authority, put in the scales of Parliamentary Authority, I find, has ever overbalanced it. *Hen. VIII.* framed the six Articles, which he got confirmed by Parliament. *E. VI.* made several Propositions concerning Religion; the Parliament did concur; so here are Doctrines and Rituals of the Church, and all antecedent to Parliament. King *Edward* was laid low; then came in Queen *Mary*, and she brought in Popery, though under an interdiction by Law; and she so precipitated the business, that before a Parliament was called, or any directions given, came in Cardinal *Pole*, Legate from the Pope. Queen *Elizabeth* went quite backwards, and caused the Epistles and Gospels to be translated into *English*, and set forth Injunctions, but still with this inference, antecedent to Parliament. So that, if we have no better security for our Religion than Paper Laws, I doubt not but a Popish Successor will rescind them. But is our Religion of no older date than *Edw. VI*? It is as old as the Christian Religion, and it is that

that we are now contending for; not a Statute-Religion, but a Common-Law-Religion, a history of Propriety in the Common Law of *England*. Now consider, if you name a Successor, what title he has to the Crown—By the ancient Records and Monuments, such and such a Line ought to inherit. If we have as good authority for our Religion as a Successor has for his Crown, we have a better title; we are in possession of our Religion, he is not of the Crown yet. It is not mine or this man's Religion that is the case, it is the Religion of the Nation, and we must answer to God for it. If Religion then be so dear to us, how can the *mediums* tendered to us by the King effect the security of it? Should the King die (Kings are subject to diseases) then are we subject, not only to the Pope, but to a company of Atheists. Have you power over the Arms of the Nation? Could I see Laws and Force together, that would be something towards our security; but that still might induce an alteration of the Government. I see no safety in what is here proposed, and therefore I will abide by your farther Debate of this great affair.

Mr *Powle*.] This Debate cannot be new to any man here; this has been often deliberated; and I shall not much differ from what I have formerly delivered. I think that we are somewhat too forward in this Debate. Men that are sick, must first have their distempers cured: When that is done, it is time then to think how to preserve them in health afterwards. The Plot against the King and Government is not at an end. Yet we are going on to something future, as if all was well and quiet. Much may be said against what the Chancellor has proposed in his Speech. It would be insignificant to bind Princes, &c. and I agree that it is a most difficult thing; but I will turn my eye a little on the other side. Can you bind a Prince, as to the Succession, in present or in future? The Motion does not exclude the Line, but the next Successor, if he be a Papist. *Hen. VII*, when Earl of *Richmond*, was attainted by Act of Parliament, and all the Judges of *England* were of opinion, "That he could

not fit in Parliament till his Attainder was reversed." But when he came to the Crown, that abolished all the Attainder. Then what will you do with a King in Attainder? *Hen. VI.* was incapacitated to be King, by Act of Parliament, and when *Edw. IV.* got the Crown, it was not decided by moot cases in Law, but by the sword and blood.^a Now how little security have we that this Exclusion of the Duke, (the next Heir to the Crown) which we are about, shall not end in a Civil War? *Robert Duke of Normandy* was contemptible, and in disgrace with his father and every body. *Hen. I.* was admitted to the Crown, because he was a brave Prince, by all the Nobility, but *Robert* offered him battle, and gave him disturbance. *Maud* the Empress had the true title to the Crown, but King *Stephen* got it. She came over, and waged War with *Stephen* for twenty years, and got the Crown at last for her son *Hen. II.*—*Rich. II.* was deposed by *Hen. IV.* and he came to the Crown by Parliament; he was a great Prince, and reigned some time. Then came *Hen. V.* a brave Prince; he died, and left the Crown to *Hen. VI.* a Minor, under the guardianship of his two Uncles, the Dukes of *Bedford* and *Gloucester*, &c. who was deposed and *Rich. II.*'s title revived, and for forty years there was nothing but battles, tumblings and tossings, &c. How little secure then can the people be (whose quiet must be thought of in what we do) by any such Act of Parliament as is proposed, from disturbances of the like nature from the Duke of *York*! In *Hen. VIII.*'s time, the Crown was intailed on Queen *Elizabeth*, by his last Will and Testament, by authority of Parliament, after *Edw. VI.* and Queen *Mary*; though by a former Act, she was pretermitted, the people inclined to her, and a Protestant Nobility and Gentry, which made her Crown easily balanced. The making Protestants all of a piece is worthy the consideration of this House, the Papists still making advantages of what we do; and if the Protestants will take themselves to be equally concerned, it will ease you of a great deal of pains. Many Princes have extended their Power by Prerogative, yet by
your

your Laws you have preserved your liberties to this day; and I hope you will transmit them to posterity. Therefore I would not run any more hazards, as I fear what is proposed may put us upon. I hope there will be the less need of this course, when it is considered that the King may have posterity, or outlive the Duke of *York*. And another great disadvantage the Papists will have, should a Popish Prince come to the Crown; there is a Revenue, which, upon the death of the King, sinks into the hands of the people, viz. the Customs; and the Successor must either come to it by Parliament, or acts of violence. If an Act of Parliament be made, for securing a Parliament sitting at the death of the King, and for Officers of State, Bishops, and Judges to be left in Office, I would trust to that. If the Successor should be a Papist, *sufficient to the day is the evil thereof*. If a Prince would secure himself, he must do it by ways and means acceptable to the people, if he consults his own tranquillity. But as for this Debate, I would adjourn it for some few days farther, to consider of it, it is of so great weight and moment.

Lord *Cavendish*.] In all this Debate, I see nothing certain but our danger; the remedies moved for are uncertain. A Bill of Banishment has been moved for the Duke of *York*, but no man at this time will think it convenient for the Duke to come into *England*, for he may come and you cannot deny him to be heard by his Counsel before such a Bill pass. If you pass it, it may put him upon getting assistance from some foreign Prince, and make a party here, or in *Ireland*, and you ought to consult therefore the safest remedy, before the desperate. If you say, "A Popish Prince cannot be limited," you may as well say, "No Law can keep the Duke out." I would therefore know first, whether what is proposed in the King's and Chancellor's Speech may not go a great way in what you aim at. Consider therefore the safest ways, and if they will not do, then go the desperate.

Sir *William Hickman*.] Pray let us come to something, else our enemies will say we are afraid of the thing we are about. But pray consider that *Scotland* is a distinct Kingdom from *England*, and if you incapacitate the Duke from succeeding in *England*, he may go into *Scotland*, and succeed there to that Crown; and I believe that *Ireland* will go along with *Scotland*, in the condition *Ireland* now is, and so you will intail a War for ever upon *England*.

Mr *Swynfin*.] I take this case we are upon to be either the preservation or ruin of the Kingdom. In one short word, I take the danger we may be in, by this Bill, &c. not of Title, and Title to the Crown futurely, but the danger is of the loss of a Protestant King, and a Protestant Kingdom under Protestant Laws, in danger of a Popish Successor. The danger, in short, lies here. A Prince subjects himself to the Laws of that Religion that utterly extirpates heretics, and that Prince undertakes their extirpation, when he undertakes the *Romish* Religion; and by that I would describe the danger we are in. The difficulties to secure you from this are likewise amazing, because they are so insuperable as to be beyond remedy. But I think they are not so insuperable in the Government as we are told. If so, it is a strange Government that has struggled so long for itself against Popish Successors, and been preserved. With the Duke's Title to the Crown, as it stands now, I do not see so much as a probability to secure you, by the Laws that should secure you, because they can never come to be executed. We have a kind of prospect and representation of what the Laws can do already. One would have thought that our Laws had been strong enough against all things relating to Popery. We see what has been done already. We have Laws that made it Treason to make reconciliation to the Church of *Rome*; Treason for a Priest or *Jesuit* to be here, and to labour to seduce any of his Majesty's subjects to the *Roman* Church; and some say, we have a greater number of *Jesuits* in *England*, than they dare permit in *France*. The Papists have Dioceses here,
and

and General Councils, and correspond with *Rome* for Orders and Directions. All this is highly treasonable, and all under a Protestant King. Now what has furthered this? Nothing, but the hopes of the Papists, of a Popish King, hereafter, by prospect, and the remotest prospect: Yet we are looked upon here, by foreigners, to be more Popish than Protestant. Our Alliances and Counsels are all that way; and this is to me void of all hope, that Laws can do us any good against a Popish King. May this King live out his days! If that prospect be taken away, I see it scarce possible to remove the other. I take it for granted, that we have no good Protestant Alliance made, for no man will trust us. I take it for granted, that, in case of a Popish Successor, all that are considerable Persons, will either go out of the Kingdom, and those that remain about the King, will adore the rising Sun, and no man knows when that Sun will set. Those that look more after their temporal interest than their souls will go that way. Here is the danger of that Law of Exclusion, &c. proposed. We have not only the King to grapple with, and his Regality, but foreign power too, to assist him; so that the King, if he would, cannot protect his Protestant subjects. The Pope's Legates and Officers will judge the King a Heretic, and divest him of the Crown, if he does not destroy you. Consider what a new-converted King will do. He will throw away all his Power and Treasure into the Pope's Arms, who governs him; and can you think that those Laws will do you any good against a Popish Successor, when he comes to the Crown? I make no question that we have had so great transactions with *France* and *Rome* (whose dangers are equal,) that they will weaken and languish you to nothing, if they do not openly invade you. You are less in danger, when the whole body is united against that danger, and I think against all dangers; and when the people are united upon their common interest, and common preservation, it will both strengthen you abroad, and you will be united at home, and your dangers will be a thousand times less than to go any other way.

Sir

Sir Francis Winnington.] I shall say a few words to this Debate, though I must confess, I am the unfittest man to meddle in it, considering the relation I have had to this great Prince, the Duke of York. But when I consider, that the greatest thing in the world is at stake, I must argue to defend it. You have been told of doubts and fears from several hands, but have had no resolute Motions. As they have been of different natures, so, if the House divide upon this great thing, you give the greatest blow to the Protestant Religion imaginable; therefore, whatever we do, let it be with unanimity, as Protestants, and I hope all here are so. Therefore I propose, that, in giving our opinions, all Gentlemen that are not pleased to speak to the business, may have as visible actions as they that do. I think we are not ready for the main Question, but I propose that we may consider the danger of the Nation. It is easy to argue, that we are inevitably ruined if there be a Popish Successor, but it is hard to say what will save us. The prospect of the Duke's being a Papist has brought upon our hands enough to overwhelm us. The disease seems desperate. The five Popish Lords are in the *Tower*, on account of the Plot, and another Lord is there, though not under that name, yet centered on that bottom, and has made his greatness upon it. The Lords in the *Tower*, if we divide upon this great thing, will think themselves saved; and now within a few days they are to be tryed. If what I shall say be not acceptable to the House, I protest I speak it not out of favour to the Duke, but for the preservation of the Protestant Cause. Now that this thing is brought on, let us do like honest men, and Protestants. If we divide upon the Question, the Papists will have more encouragement than the Duke ever gave them. Now we are steady, I would not lose one mite of advantage; therefore I would have the Debate adjourned, and no Question now put upon it, and go on upon it, as soon as the Lords in the *Tower* are tryed, and no business whatsoever to be interposed; and when we are once come again to this Debate, whoever is here may personally

ally say, he owns or disowns the Resolution, and not leave it to a few Gentlemen to debate and argue, and the rest to slip away, but that every man may have his share in it; and if we part with this Debate, we do not wisely. If the Judges see the Commons faint and tender in this matter, the Judges will be so too in judging this Law, and the Lords will shrink and be tender too. As this Bill will be hard for the Duke, so it is hard for us to be deprived of our Civil Liberties, which will be at the power of a Prince that governs as the Pope shall give his determination. When Popery is introduced, but for one Prince's Reign, the Pope will dispose of the Royal Family as well as us; therefore when I speak against Popery, I speak for the Royal Family; and in speaking this, I speak for all good and virtuous men. If it be Exclusion, or Banishment, of the Duke, let the Resolution be what it will, it is for our security. Those Gentlemen who have spoken, have told us melancholy histories of former ages, but have given us no help: It is security we look for only. I will therefore determine nothing on the King's Speech, but that no reflection be made, or lessening our interest, let us make no determination relating to the Duke till the Lords Tryals be over.

Mr *Vaughan*.] Nothing can justify this day's sitting but the hopes of securing our Religion for the future. So ill was the example of Banishment, the party unheard, that it has been a just cause of reversal by Act of Parliament in several instances. It is proposed for a remedy of what we fear, "That a Parliament may be sitting at the death of the King." And what kind of Parliament you may have, God knows! I hope nobody here desires to outlive the King. Next, it is proposed, "That the Parliament shall have the choice of the Civil and Ecclesiastical Officers, &c." If you provide thus against the Duke of *York*, you take away all Royal Power, and make the Government a Commonwealth, and the Crown will embrace a Cloud for a *Juno*. The King must give consent to what Laws you make, and this is tying the bell about the cat's neck by the mice. All that will signify nothing, when,

when, in effect, the Crown is upon the Pope's head. As for secluding the Duke of *York* from the Succession, whether that be lawful or not, I conclude it may be done by Act of Parliament by the authority of fair Precedents. If the King, Lords, and Commons cannot do it, you are supreme, and not supreme; that authority must have a greater property in what we have, than we ourselves. Upon deposing of *Rich. II.* in 8 *Hen. IV.*, the Crown was settled by Act of Parliament upon the Heirs of *Hen. IV.*, Females were excluded. An Attainder excluded the Duke of *Clarence* and the Children of *Edw. IV.*, and set the Crown upon the head of *Rich. III.* Then *Hen. VII.* came in, if by any Title, by Act of Parliament. But we have a Statute of the 13th of Queen *Elizabeth*, "That the Crown may be disposed of, for the good of the Nation," and it was Treason in her life-time, to affirm the contrary, and *Præmunire* for ever after. And she had good reason to pass such a Law, on her part, because she challenged the Crown, not by Succession, but by Act of Parliament. But the subject-matter of our Debate to-day is not only the preservation of our Prince, but our Religion too. Now consider in what state we stand. The Duke of *York* has all the obligations of gratitude upon him to the King and Kingdom, if you make no use of the power you have to omit him in the Succession; but at this time to proceed to this Vote will make the Duke discard all his loyalty, and love to his country, and proceed to nothing but vengeance. I have told you my opinion, and given you my Reason for adjourning this Debate.

Sir *Henry Capel.*] I do agree, that Laws made to declare the Succession, are to be obeyed, when made; but they are not yet made. I will not say of what divine right Government is, but I will say, that obligation to obey the Government is as long as it can give me security to protect me, and I ought to defend that Government and Governors; and I will not take away Right, where Right is established. There has been a great burden, as Protestants, laid upon us. We are reproached with cutting off the King's Head, and with the late rebellion.

The

The safest way to preserve us is, not to take away the Duke's Right to the Crown: Should you take it away, do you not put all the Protestant Princes upon it to preserve his Right? If he hath his Right, they can have no pretence in his behalf: But, parliamentarily, this day's consideration is to take care of the life of the King; therefore I move not to close the Debate, but appoint a Bill to be drawn, "That there may be a Parliament every three years, and a Parliament in being, at the demise of the King." A few days will pass it, and bind us in all the security imaginable against the consequences we apprehend.

Sir *Thomas Littleton*.] I will promise you, that, as near as I can, I will not trouble you with the repetition of any thing that has been said to-day. I should have been glad that the Debate might have been adjourned for some time. If it will not undergo the test of some few days consideration, it will abide nothing. Here was a Motion made, "To banish the Duke of *York* temporarily;" and that is against Justice, he not being heard. And yet the House seems unanimous for a total Exclusion of him from the Crown. To do the greater things so currently, and boggle at the lesser, is strange! Now whether you will go by way of Bill to exclude the Duke, &c. is the Question. To put a Test upon the Duke, before he be admitted to the Crown, is the most impracticable thing imaginable; but I shall not be afraid to speak my mind in this great affair, though seemingly I may go against the stream. There are instances, that Acts of Parliament have been broken in cases of Religion: In *Edw. VI.*, and Queen *Elizabeth's* time, (and I take it they were times that came close on the heels of one another; and may you not expect the same thing?) I take notice, that there was then a general fermentation of Religion, all the World over; and these things go by tides and times. But now is there any such fermentation in the World, as for Princes to change Religion? It is not in the power of the King of *France* to change the Religion in *France*, nor of the great *Turk* in *Turkey*. I distinguish between "fluctuation" and "ferment." Now people are settled

tled upon their lees in Religion, and that rotation ceases; they are settled upon what they are settled, Now as to the legality of binding a Successor, it is said, "We cannot fetter and bind a Prince." The Act of Parliament of *Hen. VIII.* gave the disposition of the Crown to *Hen. VIII.* under the Great Seal, &c. or by his last Will and Testament, as he pleased; and he disposed of the Succession accordingly, and this Will was exemplified above an hundred times, and dispersed all the World over in all Princes Courts. But the natural Right took place in the Succession, not the King's last Will and Testament. By that Will, the Title of *Grey Duke of Suffolk* remained in the Duke of *Somerset* by marriage. Now King *James* came in upon the Title of the daughter of *Hen. VII.*; and can any man say, that the Title of the *Somerset* family is considerable to pretend to the Crown? It is nugatory, and yet the *Somerset* family had a Title by Act of Parliament, and it is now such a trifle that no man so much as entertains his thoughts with it; so that Laws, we see, can do nothing to exclude the right Heirs in the Succession. Besides, it is disagreeable to the opinions of all the reformed Churches beyond the sea; they profess obedience to Princes though of a different Religion, and to clear themselves to Popish Princes, they declare it. The case of the Holy League in *France* for exclusion of the Princes of the House of *Bourbon* comes near this—The last Estates of that Kingdom were held at *Blois*, where they all agreed and concurred to exclude the King of *Navarre**, by name, from the Succession of the Crown; but the King refused it, and denied to give his consent. It may be, this Bill that you are about may have the same fate; you have little prospect in the unanimity of the King and the Lords. All the Protestant Divines of *England* exclaimed against the Church of *Rome* for excluding *Hen. IV.* from his Right to the Crown of *France*, and our own arguments may justly be returned upon us, and so we shall cast dirt upon the Protestant Religion. This Doctrine of excluding the right Heir, &c. is more

* Afterwards *Henry the Great.*

papistical and jesuitical than Jesuitism or Popery itself. As for *Scotland*, they had more fears of Popery than we now have. After *Mary Queen of Scots* was excluded, did they not call her home? Did they not limit her to her chapel, and no more? and limit her to twelve persons only about her, of her Religion? But when she grew weary of it, and would be tampering about the *Romish* Religion, they imprisoned her in *Loch-Leven* Castle, which she was soon weary of, and made her escape. They are in *Scotland* not so much for secluding their Princes from the Crown, as for ordering their Princes to do what they list. We need less to fear, if we take this example of *Scotland* along with us. In *King James's* time, the *Scots* were all drawn here with gifts, &c. and when a Prince is newly come to a Kingdom, it is a fine jolly time; but I am sure it was a miserable time with them in *King Charles Ist's* time, as they were wholly excluded the Court; and lately, by their accession to *England*, they have lost the glory of their Kingdom with foreign Princes. They neither send nor receive foreign Ambassadors, nor make any Treaties. What is done here, they must be contented with. They were supported in *Qu. Elizabeth's* time with Pensions from hence, *K. James* being the rising Sun; but now it is a reproach in the Court of *England* to be a *Scotchman*. Should we do what we are about in the Succession, they may take occasion, from these discontents, to disunite themselves from *England*. Therefore I am not ashamed to conclude my Motion, "That we proceed upon my Lord Chancellor's Speech, and ground a Bill upon that."

Mr *Paul Foley*.] I hear it said, "That it is not in our power to exclude the Duke of *York* from the Succession of the Crown." The case of *Hen. VII.* is, that he was attainted, and by Act of Parliament, but the descent of the Crown upon him did purge away that Attainder; and that is good Law; but it is in the power of King, Lords, and Commons, to exclude any man from the Crown. It was agreed to be Law by those Judges in Parliament, when the Statute of *Queen Elizabeth* made it *Præmunire* for any man to maintain the contrary.
What

What a man is duly attainted of, he forfeits to the Crown; and notwithstanding the forfeiture, he may be pardoned by the King; yet, his blood being corrupted, he cannot inherit an estate from his Ancestors, because all is forfeited to the Crown. But that is nothing to the case before you, that such a particular person shall not come to the Crown. The Question is now, Whether there be any other way to secure Religion, than what is proposed. I have observed what has been proposed another way, and had I received any satisfaction in matter of Religion, I might possibly have closed with it; but till then, I shall rather exclude the Duke of York from the Succession, than lose the Protestant Religion. If the Duke be excluded by Act of Parliament, that can be no legal Parliament that is called by him; else, he may call what Parliament he pleases; and I am the more confirmed in it, since the case of Sir *Samuel Barnardiston*. Do what you can, all may come to blood; but you will secure the Protestant Religion by making the Duke incapable of the Succession, by Act of Parliament.

Mr *Booth*.] I think that we shall not exasperate the Duke more, by this Bill to incapacitate him the Succession, than we have done already. I would have the Vote for a Bill to pass now, that it may not be put off, but remain upon your Books, to your honour, that you have done what your Country sent you hither for. *Capel* has told you, "That it was a reproach to the Nation, the cutting off the King's head!" But we shall be reproached abroad and at home too, if we preserve not our Religion. Shall we support a man, whose principle it is to destroy the Religion and Gentry of *England*? Therefore I move for the Question.

Sir *William Coventry*.] I hope the whole carriage of my life will make me need no apology for myself, as to my sincerity for the Protestant Religion. When the late King was in Prison in the Isle of *Wight*, some propositions were made by his Majesty, towards an accommodation betwixt him and the Parliament. Many of that Body were of opinion, that they were a good ground for
Peace,

Peace, but another Party rejected them; and after the Nation had for some years been embroiled in blood, the Crown was restored to the right Heir, without any limitations, which the late King, his Father, would have been contented with. Whenever the King dies, and it shall be our ill fortune to have a Popish Successor, he will venture a push for it, rather than have the Crown manacled with what the King has given you leave to do, in his Speech. The Precedents mentioned were of Kings and Queens not manacled, but wholly in possession of their Royal Power. Consider the inconveniences the other way. The matter of *Scotland* was touched upon. I will only touch upon matter of fact. When Royal Authority was banished in *Scotland*, and *Argyle's* Party, called "the violent Party," opposed Duke *Hamilton*, yet they fought it out to the stumps, till they had got the King into *Scotland*. Whenever it comes to pass that the Duke shall be disinherited, and they in *Scotland* set him up for King whom you acknowledge not, they will set up such a thorn in your sides, by the help of *France*, that you will never be able to get it out; and how *France* has formerly played that game, we all know. By avoiding this danger, you anticipate it. As long as the King lives, you have an awe upon the Duke; and the Princes of *Christendom*, to whom the Duke would appeal, will say, "They cannot intermeddle *pro tanto* but *pro toto*." They will probably not meddle with any Laws you shall make for your safety, so that they appear not a disinherison of the Duke. All the Crowns of *Christendom* are hereditary, except that of *Poland*; it will concern them not to let subjects be meddling in electing Kings in hereditary Kingdoms. That danger, which you will immediately draw upon yourselves, may be prevented in time. Should the Duke die, or the King of *France* die, or any thing happen in *Christendom*, that may help us. Let us not throw another strength into the King of *France's* hand, by making the Duke desperate. The latitude given you in the King's Speech is sufficient security against your fears. If you let alone this matter of the Succession, till the

Trial of the Lords be over, you will have it unanimous. I would lay my hand upon my heart, as to this Bill of Exclusion, &c. (which as yet no Gentleman hath openly said) that we may gain advantage by time. You may then consider whether you dare sufficiently rely upon the conduct of the King's Ministers; else you will precipitate your danger, and your defence will be weaker than before you do the thing. I would therefore adjourn the Debate.

Mr *Boscawen*.] I do not take this matter we are upon, but with all the circumstances that attend it, and then I take it for granted, that if there be any more probable means to preserve the Protestant Religion amongst us, than what have been proposed, I shall not differ at all. But if you consider the horrible Plot which has made the Papists an irreconcilable Party, and that a Protestant King is in danger of his life, much more will Religion be in danger when a Papist comes to the Crown. By being willows, and not oaks, men have kept their places at Court; which makes me expect little effect from what has been proposed in relation to the King's and Chancellor's Speeches. No confession of faith binds a man to any Allegiance to a Prince secluded the Crown by Law. As for *Hen. IV.*, there was no Law to seclude him from the Crown, and he was but a private person, and the people ought not to have taken up arms against him. But where there is a Law for it, they are betrayers of the Protestant Religion, if they do it not when in their power. We ought to consider the Chancellor's first Speech, and not that last Speech. Now you have an opportunity to secure the Protestant Religion, do it; else, posterity will curse you in your graves. The whole Protestant Religion in *Europe* is struck at, in a Popish Succession in *England*. If the Protestant Religion keeps not up its head now, under a Protestant King, it must be drowned under a Popish. Suppose the succeeding Prince should be a Lunatic, as the King of *Portugal* was, and they had no way of securing the Government, but by pretermittting him—Much more in our case, if the security of an Act
of

of Parliament be as good as any security for the Right of the Crown. Queen *Elizabeth* had no Right to the Crown; but by Act of Parliament, and she made it *Præmunire*, by Law, for any man to hold the contrary, &c. and yet some Gentlemen say, "It is against Law." We must have a Law to secure this Law, else you will be infamous. If the King consents not to such an Act, &c. you are not to blame, you are but in your private capacity, as Commonpers. But I presume, an Act, in this case, will pass Royal Assent. It is for the King's security, ours, and *Scotland's*, that it should pass. But I intend to go no farther in it, but to have a Protestant Prince. If I am satisfied that the Duke of *York* is a Protestant, I am not against him. Upon the whole, I am clearly of opinion, that till we go against Popery, beyond retreat, we shall have no happy days; and then, I hope, we may see happy days. But Popery and *French* Government are almost check-mate* with us. There is no probability of security the other way proposed. Would you have Parliaments make Laws without a Prince? Or would you have the Government in Conservators hands, such as we may confide in? That would look like a Commonwealth, and I know no such great men that we can trust upon such an account; besides, they have no power, and will be insignificant. Making Clergymen and Justices of the Peace will signify nothing. A troop of horse, and a file of musketeers, will easily turn us all out of doors. Let us know what we have to trust to. But the several proposals made to secure the King's Person, and the Protestant Religion (except this Bill proposed) look like gold, but are but leaf-gold when you touch them. Whatever becomes of us, let us preserve the Protestant Religion, and pray put the Question for the Bill†.

* A phrase at Chess, implying that the game is lost, by the King's being in such a situation, that he cannot move, without being taken.

† The substance of this Speech, which was soon after published, is

to be found in Lord *Somers's* Collection, Vol. xx. An Answer to it was also published, under the title of "*Fiat Justitia et ruat Cælum.*"

Bishop *Burnet* delivers his opinion on this subject, in the follow-

Sir *Nicholas Carew*.] When the King saw that his Brother had so many friends in the last Parliament, as to agree to a Proviso for exempting him from the Test against Popery, and the Oath to be taken in the Lords House, &c. it was time for him to dissolve that Parliament. I hope it will not be so in this.

After some contest, for Candles, or no Candles, the Vote was carried in these words: *Resolved*, That a Bill be brought in to disable the Duke of *York* to inherit the Imperial Crown of this Realm.

The House divided, those for the Bill went out, and those within soon removed from their seats, and would not be counted, but yielded the Question. [And a Committee was appointed to draw it up.]

[*Resolved*, *Nemine contradicente*, That in defence of the King's Person, and the Protestant Religion, this House doth declare, That they will stand by his Majesty with their lives and fortunes; and that, if his Majesty shall come by any violent death (which God forbid!) that they will revenge it to the utmost upon the Papists*.

And an Address was ordered to be drawn up accordingly.]

Monday, May 12.

Sir *John Trevor* reports from the Committee of Lords, &c. That the Committee of Commons desired to see the Commission of the Lord High Steward, and that the Lords would consider of a

ing manner: "I did always look on it as a wild and extravagant conceit to deny the lawfulness of an Exclusion in any case whatsoever. But for a great while I thought the accepting the limitations was the wisest and best method. I saw the driving on the Exclusion would probably throw us into great confusions. And therefore I made use of all the credit I had with many in both Houses to divert them from pursuing it, as they did, with such eagerness, that they would hearken to nothing else—I foresaw, a great breach was like to follow; and that was plainly the game of Popery, to keep us in such an unsettled state. This was like either to end in a Rebellion, or in an abject submission of

the Nation to the humours of the Court. I confess, that which I apprehended most, was Rebellion, though it turned afterwards quite the other way."

* This is a Resolution, which, even at this distance of time, cannot be read without horror; as devoting the innocent to punishment indiscriminately with the guilty, and rather exposing the King's Person to danger, than providing for its preservation. For if the earth had produced a wretch profligate and desperate enough to have risked his own life by an attempt on his Majesty's, he might have played the Assassin for the sake of one party, and thereby brought perdition on another. *Ralph.*

longer

longer time for Tryal of the Lords, till matters could be adjusted. The Lords would make no Answer to that of the Bishops presence at the Lords Tryals, "as they had no Commission to treat of that matter;" so we know not what Resolution the Lords have taken in it. The Lords said, "That it was impossible the Lords could be tried to-morrow." That as to the Commission of the Lord Steward, it was but ordinary, and that he had no power as Steward, but as a Speaker, and *pro hac vice*, for it was a Court of Lords, and not a High Steward's Court, as in the Parliament-Roll, 10 *Edw. I.*, concerning Indictments of a Peer. They said, "they would make known the several Propositions to the Lords;" so the Lords adjourned their Committee, and the Commons did the same*.

Sir *Thomas Littleton*.] The Lords did declare, "That the Tryals did not depend upon the King's nominating a High Steward, for they had proceeded to try if the King had not nominated a High Steward.

Sir *Robert Carr*.] When there is a Lord High Steward nominated out of Parliament, he is Judge of the Court, and does not vote; but in a Court of Lords he gives his Vote as other Peers.

Mr *Sacheverell*.] There is another thing very material. The Lord Chancellor, or the Lord President, declared, "that, in several Tryals, as that of Lord *Strafford's* Tryal, there was no special Commission to the Lord High Steward; and the Lords apprehended that the Commons meant no otherwise than to keep the Judicature as it was, and they will show you the Commissions to-morrow."

Mr *Powle*.] The Lord Chancellor said, "The Lord Steward of the King's Household, if present, ought to be, (the Duke of *Ormond*,) but being absent, they appointed a High Steward.

Mr *Hampden*.] The nature of the Court is not altered if there be no High Steward appointed.

The Officers of the Ordnance attending (according to Order) were called in. Then the Speaker addressed himself thus to Sir *Jonas More*: "There is a great Train of Artillery shipped from the *Tower*. The House would know upon what account, and whether that Train was assigned the last year?"

* This Report is not mentioned in the Journal.

Sir *Jonas More.*] The Store-keeper will inform you, that they were for land service; twenty were provided, and eight more to be sent, which are not ready. I am Surveyor of the Ordnance; the Store-keeper will tell you farther.

Mr *Sherborne*, the Store-keeper.] They were designed for *Flanders*, and the King ordered them to be sent to *Portsmouth* for the better security of that Garrison; it is not all shipped, but most are aboard; the equipage is not yet shipped, but all is by the King's particular Warrant for this service upon small ships.

The King's Warrant was read, viz. "For the use of the Fort at *Portsmouth* *."

[Debate.]

Mr *Garroway.*] These are not pieces of battery, they are small field-pieces. I would know what use there was of that equipage for the Fort of *Portsmouth*?

Colonel *Legge*, Governor of *Portsmouth.*] These are designed for breast-works to prevent any surprize, and the harness is but what is absolutely necessary to the pieces. You ought to have it for all the Ports opposite to *France*, to prevent any landing, and it is necessary at *Plymouth* also. An estimate is to be given in to the Council of all the charges of pay, and what relates to the Garrison, and for the *Isle of Wight*.

Mr *Bennet.*] If these things are useful for the security of the Fort, &c. there is an end; if not, it is for some other purpose. I would only be satisfied in that.

Mr *Trenchard.*] Before the Plot, there were 10,000 arms sent out of the *Tower*, without any account given, or to what purpose they were sent.

Sir *Gilbert Gerrard.*] By *Legge's* advice to the Duke of

* On *Saturday*, the King having appointed sixteen small pieces of Ordnance to be sent to *Portsmouth*, notice was taken thereof in the House of Commons, and a great suspicion that they, being sent with Field-carriages, Harnesses for Horses, and all necessaries belonging to the Train of a marching Army, they might be intended rather for such an use than to furnish a Garrison, as is pretended. At the same time reports were

spread, that the Duke of *York* was returned into *England*, or hourly expected, and some believe his business is to hinder the disbanding of the Army, with such others as the knowledge of his nature, together with the persons that command in *Portsmouth*, the *Isle of Wight*, and some other places, may suggest, in the most jealous time that I have ever lived in. *Sidney's Letters*, p. 66, 67.

Monmouth,

Monmouth, the Train of Artillery was sent to *Portsmouth*, a Garrison of ancient standing, in case of landing; but has the Militia been made any use of for the defence of the Nation? Those little guns signify little for defence of the place—I wish the great guns there are not out of order. *Legge* is a servant of the Duke of *York*, and he that will hazard his Brother's life, and have a hand in such things as were reported you yesterday, what will he do, if he comes to the Crown? I have reason to be jealous; and we having no Army in being, and a Train of Artillery, I must suspect an Army to land to support Popery, &c.

Colonel *Legge*.] Ten times that proportion of Artillery will not serve a land Army. But finding there were jealousies, &c. I desired an Order to send them to *Plymouth*. I am the Duke of *York*'s servant, and I will serve him affectionately, but I have been bred amongst them that speak no language but my own, and I will live and die a Protestant, and am as loyal as my family has always been.

Mr *Papillon*.] If there be no need of these arms at *Portsmouth*, they might as well stay at *London* as be removed to *Plymouth*. The thing looks a little odd to me.

Sir *Thomas Player*.] If I have a master that betrays his Country, and treats with foreign Princes to endanger the life of my Sovereign, I will not serve such a master—(the Duke of *York*.) You are told, “these pieces, &c. were for the benefit of the Country, in case of landing, &c.” But the Militia has not been useful, and is put into such hands as are dangerous. The Officers of the Ordnance contracted with the Gunsmiths for repairing arms, and they owe them 10,000*l.* but never paid them. If you examine the *Tower*, I believe there are not two thousand good arms left. That there were within twelve months great quantities carried out, is most true. Examine the State of *England*, and look upon every thing that belongs to your security, and you will find it weak and decayed. It is not well to encourage trifling complaints; but I would refer it to a Committee.

Colonel *Legge*.] I know not of above 20,000*l.* of the Money for the *French* War, that came into the Office of the Ordnance; all the rest has been diverted for the Gunsmiths—I believe that is true.

Mr *Sacheverell*.] I am for calling in the Officers, to ask them some farther Questions that were proposed the last Parliament. All the time we were at Peace with the *Dutch*, there was Powder, Ammunition, and Ordnance sent to the *French* King. It will be proved, that the Ordnance that played before *Valenciennes*, and the Powder pretended to be sent to *Jersey*, was sent into *France*. I know not why there should be a land Train of Artillery for a Garrison, unless it be to go against the Country. The Powder was pretended to be ill Powder here, and therefore sold to the *French*; but it was good Powder there, and they have left us no Ammunition nor Artillery.

Colonel *Titus*.] It is strange that such vast sums of Money have been given, and the Nation never in a more defenceless condition. At this rate, every Garrison in *England* may want such a Train of Artillery. So many thousand pounds for secret service! Surely that was not for the Ordnance. Till you make enquiry into these miscarriages, you will never be safe. As for this matter of *Portsmouth*, I would refer it to a Committee, that the several Officers may inform you in what conditions the Garrisons are.

[*Ordered*, That a Committee be appointed to examine the account, this day delivered to this House, of the Train of Artillery now shipping off for *Portsmouth*; and to examine what Arms have been lately delivered out of the *Tower*; and what Guns, Mortar-pieces, Powder, or other Ammunition, have been sold, or sent over into *France* and *Flanders*, or any other foreign parts; and to enquire of the state of all the Garrisons in *England*; and how they are fortified and provided; and how the Money, by a late Act designed to the Office of Ordnance, hath been employed; as also the Money allowed for particular Garrisons and Fortifications; and report the same, with their opinion thereon, to the House.]

[*May* 13, omitted.]

Wednesday,

Wednesday, May 14.

Mr *Powle* delivered a Message from the King, and said, "It is not my province to deliver a Message from his Majesty, but Mr Secretary *Coventry* is gone sick into the Country."—He opened not the Message, but delivered it in writing to the Speaker, to this effect:

"CHARLES R.

"Though his Majesty hath already, at the first meeting in Parliament, and since, by a word or two, mentioned the necessity of having a Fleet at sea this Summer, yet, the Season for preparing it being far advanced, and our neighbours before us in their preparations, he cannot hold himself discharged towards his people, if he do not now, with more earnestness, again recommend the same to your present care and consideration; and the rather, from the daily expectation of the return of the Fleet from the *Streights*; to which a great arrear is due: And he must acquit himself of the ill consequences, which the want of a Fleet in such a juncture may produce; and he hath not done this without considering, that the entering on this great work presently can be no hindrance to the other great affairs upon your hands, but rather a security in the dispatch thereof."

[Debate.]

Mr *Powle*.] If the Secretary had delivered this Message, he would have opened it better in some particulars. I will crave leave to open it, in his place. The King says, "It is absolutely necessary there should be a Fleet this Summer against foreign attempts, &c." And there is cause to apprehend danger; and at this time, his appearing with a Fleet will be of the greatest concern abroad, because all Alliances, since the Peace, are going upon a new foot, and none will ally with us, and lose this opportunity of a Peace, without a Guarantee; which will signify nothing if Princes see we have no Fleet nor Ports; and they may possibly go to another Alliance. The Customs, which the King desires should be appropriated for the future to the Navy, are so far engaged, and anticipated, that it is impossible, for the present, they should do any thing towards it. If the King could do it, he would not have sent you this Message, but it is impossible for him to do it out of his own Revenue. Sir *John Narborough's*
Fleet

Fleet is in Arrear, and now coming home. And seamen, without hopes of pay, will run into disorders, and so lose the opportunity of manning out a Fleet this Summer; so that the King desires you to take it into consideration, before it be too late.

Mr *Sacheverell*.] If the case be as *Powle* has opened it, its prospect is much more melancholy than I apprehended it. If now we have no Alliances, nor Guarantees for the Peace, all this while; if they who have made this Peace have no Guarantee, they have betrayed us all; and if so, they are as criminal as the Lords in the *Tower*. Now we must speak plain. The King has chosen a new Council, and has told us, "That without them he will act nothing." They are Gentlemen of ability, worth, and interest to serve him; and in this first step they represent to the King, that this House should be so like the last, that now we are in the height of our affairs, and about to settle the condition of our being; to give Money to enable the doing the same things again, now we are in the height of our business!—This House is for the security of *England*, and let us not put it out of our power to do it. This Money demanded may serve them to spend till *October*; and when you have given it, you may be sent home with a brand of your folly into the Country. They ask you now, a Summer-guard, and yet were in sufficient security last Summer and Winter. Are all the Ships we tricked out with Stores, and all the Revenue brangled? I expected that the Duke of *Lauderdale* would have been removed, &c. but we have had no Answer to our Address. Once give your Money, and fairly part, and the Lords in the *Tower* will not be tryed, and nothing done. If you be not secure at home, it is no end to think of abroad. If these men, that have the eyes of the Nation, look no better to affairs abroad, you are at an end. You are to do at home, rather than make provision against we know not whom. Let them take off Anticipations from the Customs—You are told of "the Arrears of Sir *John Narborough's* Fleet"—It is not above 200,000*l.* extraordinary, and that is all the danger; but if you give Money, you are sent home presently,

presently. Let us look to secure things at home, and then it is time to talk of this.

Mr *Garroway*.] This is a great surprize to me, to ask for Money now. The King recommended three things to you in his Speech. The first of disbanding the Army. You have done the other about prosecution of the Plot, in which you have found all the obstruction in the world, which makes people think you are not fairly dealt with. —Somebody is in the Plot, whom we see not. As for the Navy, &c. if the Revenue be anticipated, as we are told, let us bring in a Bill to cut them off, and make them refund. If the Money was not given where it should be, we are unfortunate to give Money, and have not that issue we hoped for, and to let that hold go. Till we have some issue of our expectations, I would take nothing into consideration about Money—Let them that it belongs to look to it. When *Narborough's* Fleet comes home, one month's assessment may do that. I would not now charge the people, and put Money into those hands who have so ill managed it, at this time.

Mr *Powle*.] It is not my intention to argue for miscarriage, which has been great, and intolerable. If it had not been so, you had not had the great man (*Danby*) in the *Tower*. It is not the King's intention to shelter the faults of other men, and you may represent to him the miscarriages, &c. But it is not your duty to leave the Crown in this misfortune; and nothing can bring the King out of it but the advice of this House, and the King will take it. If this can be done without Money, I had much rather concur with that. Consider the state of the Navy. There is a debt of 400,000*l*. Tallies upon the Customs; if this be fit to be thrown off, you may, without any man's property being hurt. I am so far of opinion, that it will never be well with the Nation, till the Customs are appropriated to the use of the Navy, and not in the power of the great Officers to anticipate, or pawn them, and leave the Navy unprovided. I press you only to consider to give the King true Advice what to do in this matter, and of that you cannot longer defer the consideration.

ration. I declare my opinion. Consider what Advice you will give the King; if there come any ill accident, I hope it will never be said, "That the Kingdom shall suffer for want of the Advice of this House."

Mr *Whorwood*.] I am much better satisfied with the Motion, from the person that delivered it, (*Powle*,) and that he might be of our opinion, if he were not in the place he now is in, viz. a Privy Counsellor. It is my opinion, he is the same man in his heart. But if any man was in that station (or figure, as the new word is) something of this nature must be done. But give Money, and enslave us again, and let the Navy go where it will. It has been the design to expose us without a Navy. We have so sad an account of the Stores, that it is a wonder who has governed the Nation all this while, whether *French* men or women. These seven years, there has been no person to blame but the King. "The King's Warrant, the King's Command." I will obey my King; but had I obeyed the King as some have done, I had been fitter to have been sent for and hanged up, than have been one minute in the House of Commons. Still the same persons govern; though there are many worthy persons of the Council, yet it is at the old pass. They will get the Money, and then go hang yourselves. I had the ill fortune to please so many in what I said the last Parliament, upon such an occasion as this, that I was not sent to the *Tower*, as a Gentleman in my eye would have had it. I heard two talking together last Parliament; says one "What news?" "None that is good for any thing; they talk in the Parliament, but they give Money; and when that is done, they may go home, and cool their toes." And give Money now, and we shall be at the same pass. Now, when I see this worthy person (*Powle*) of the Council, and things go on at the same pass, I see that new men do not mend them, but possibly they are worse. Pray, let us have some reason why the Duke of *Lauderdale* is not removed, &c. It may be said, "The King will not do it." Still so much is laid upon the King, that I wonder how he can bear it. I wish

wish any body would tell him so. I have talked freely of this to the King. I have had the honour to speak to my Prince, as much as any Privy Counsellor of them all. And I believe he would hear me now, if I went to him. (*Many cried out, "Go, go."*) If the thing was represented to the King by such of the House of Commons as are not afraid to lose their places, it would make impression upon him. But we have no Answer about the Duke of *Lauderdale*, Affirmative or Negative, and we know not what to trust to. And as for the Tryal of *Danby's* Pardon, &c. I hear the Bishops must sit. If they come to try life and death, I fear few Traytors will go to pot. But let us go on *gradatim*, step by step, till we satisfy the people of *England*; else it is not Money that will do it. To give Money now, is so derogatory to your honour, till the Lords in the *Tower* are tryed, that you cannot answer it. For Mr *Bertie*, the other day, to tell you "He obeyed the King's command," in so vile a thing as the concealment of the Pensioners, to betray their fellow subjects!—The King will never do it. Let us know whether he have that Book or not. I insist upon that Book. I dare say, they had as many at their beck, the last Parliament, to go out, or stay in, on any occasion, as there were true honest people. Let us now know them: I pray God, there be not some amongst us still. But pray let us have that Book. But we are told of 450,000*l.* Anticipations upon the Customs; if it be for the good of the Nation, pay the debt; but if for *Jack Straw*, and I know not what, does any man think you will give Money to maintain such people? If it be not reasonable to admit these things, let us have a Bill to take off so much of these Anticipations, as will pay the King's debt. Enter into the bottom of these things, before we enter into one tittle of consideration of the Ships.

Mr *Booth*.] I do not wonder that Money is asked of us to-day. I rather wonder it was not asked sooner. The last Parliament seemed, in what they did, to be of the opinion of the Nation, but it was the treachery of a great many. Money is the worst thing at
this

this time to be granted; nothing can tend more to our ruin; and if not so employed, I expect it will be to men and women, as if it was intended to debase the Nobility and Gentry of the Nation. Let us see them reassume the Crown-lands that have been given away, and Pensions taken off from the Revenue; let us see justice done upon the Treasurer, the prisoners executed, *Lauderdale* removed, Religion secured, and the Fleet purged from Papists. I hope we shall not pay twice for one Fleet, as we have done twice for disbanding one Army. I hope you will not give any Money now.

Sir *Nicholas Carew*.] I will not rip up miscarriages, but would have you think what is fit to be done. Here has been an alteration of Privy Counsellors, but still here is the same lump of leaven left; these may be turned out, and the former may return, *like the dog to his vomit*. We know who took in all the Officers, &c. which occasioned our Vote on *Sunday* last. I would not let this matter die, *sine die*. But there is a greater thing to be done first. The Lords in the *Tower* are to be tried, and we are to be secured against Popery, not only for our lives but for posterity. These things clearly done, I would then consider of the Fleet, and set the King at ease, and take it into consideration.

Mr *Bennet*.] I would not discourage the King, as if the House would not give Money; but not do it till things are in better order. But I expected that *Powle* would have told us, that *Lauderdale* was gone. They say he is gone but to *Ham* *. I hope he will remind the King of it, by what he hears said here. But because the King does anticipate the Revenue every six months, must you pay it? Whoever trusts upon such ill bottoms as the Customs, set apart by Act of Parliament for the Fleet, I would void all their debts, and when the King pays 30 *per Cent.* we must pay it, and be absolute beggars. If you pay 12*d.* for every 6*d.* we outspend our Money, and shall be reduced to the condition of the *Spanish* Monarchy. I differ from *Eooth*, not to consider of it at all; but when the condition of the Navy is reported, then I would con-

* His Country-house.

sider of the Motion, if it be in order to consider that the Customs are already given for the use of the Navy, and how they are anticipated. But of this in due time.

Mr *Boscawen*.] This is a matter of great moment of the Fleet. This House has not been wanting to supply it, and will not be wanting for the time to come, if we can have good assurance—But before you enter upon this consideration, see that the Army be disbanded. The Motion was made moderately and with consideration. But I believe the House is disposed to supply in due time, but not now, till we see what the Lords will do, and have a Report from the Committee; and there can be no umbrage, that the House will refuse the King Money for the Fleet, when they are assured that it will be employed the right way.

Sir *Robert Howard*.] Since the King has had a new Council, you have had Messages from him of other stamps and natures than before. I would not have that reflection upon them; not only the Revenue is extremely anticipated. In 1674, I gave you in a paper of the state of the Revenue. In 1675, I charged the Treasurer, &c. before the Lords of the Council. In 1676, he charged me; but the Exchequer has been managed in such an extravagant way, that the Nation is at the mercy of the Money-lenders, what to do with it. Had Common Law been observed in it, things had not come to this pass. There is not a 12*d.* due of the Revenue to find the King bread for a year*. Anticipations and Patents are abroad, and 20 *per Cent.* is a moderate thing for interest. This can never be well settled but by Parliament-bargain, and I believe the House will receive satisfaction. No Fleet will gratify those that have a mind to have us destroyed. I would adjourn the Debate to a day certain; therefore I move it; and in the mean time debate what observations have been before this. Stat all, and then Money will come much better, and more easily.

Colonel *Birch*.] The truth is, the consideration before

* This expression of Sir *Robert Howard*'s is also mentioned by Sir *John Reresby*. See his Letters,

you is so amazing to me, in relation to circumstances, that it looks too big to take hold of, for me to express myself upon. There is from that Honourable Person (*Powle*) a desire from the King of Money for fitting out the Fleet; but particularly to pay off Sir *John Narborough's* men, &c. I am amazed that this is our condition. Whoever advised this did not think of the Act of Parliament last year. There was Money, and what was that 200,000*l.* but for Money the King had laid out before, for preparations for the War against *France*? the Navy, &c. next the Princess of *Orange's* Portion, and for fitting out a Fleet. The Customs, that year, were 600,000*l.* and yet there wanted 200,000*l.* more for setting out the Fleet for a War with *France*. The House had then an account, that not a Ship but was ready, within some few of ninety, and all in perfect order. It was said then, "That the Customs might bear some part of the charge." But Money was requisite in satisfaction of them, and 200,000*l.* was given to set all in order. And now I appeal to them that gave us that account of the Ordnance. Their own account was taken, and this Money was to do all the work, pay the men, and 60,000*l.* over to spare for another time for stores. All this is entered into your Journal. I speak this only, that Gentlemen may see our condition. And now we are told, "That the Navy is twenty or twenty two months behind-hand, and thirty due to Sir *John Narborough*." Still we see, the more Money we give, the more streights we are in; had we given none, we could not have been in worse condition than now. This very Money was given for the Navy; and there could not be any Warrant for any other use for it by Act of Parliament. Having said this, if you cannot mend the matter, it is strange. The Excise Office has a Million of Money Anticipation. Let it come from what hand it will, we are in such a condition, that we know not how to secure ourselves. Now the Question is, what is to be done? This year, no extraordinary Fleet can be set out. The Customs do nothing at all, and for all this we are farther behind-hand than ever. But with submission,

sion, I think it is not on the part of the House to come to this, but on the King's part; but without adjourning the Debate, I would vote to supply the King with such sums, as are for the safety of the Nation, &c. But I shall tell you what to do next. But what will you do with *Narborough's Fleet*? Suppose you suspend the Customs upon the Revenue, for some months; if 100, or 200,000*l.* Pensions may be stayed, for this purpose. But I must not stay here; we are told of a general Peace, and can have no Alliances without a Fleet. This has been cried out upon, two or three years ago; and if there be no Alliances made now, who will meddle with us? Though we are under a Protestant Prince, yet, till the World know, whether Protestant or Papist shall be uppermost in *England*, nobody will meddle with us. If *England* ever subsist, it must be under a Protestant interest, and that will never be, till the King puts himself beyond retreat. If the King comes not up to *Sunday's* Vote, it is not standing upon it whether they hang the Priests or not. If there be Popish Officers in the Fleet, and till it appear clearly to the World that the Government is against all Papists, and you go through with it, till then, neither King nor Kingdom can be safe, and this is for the King, and not you, to do. And I would give no Money till we know whether we shall be Papists or Protestants, whether live or die. After the House did signify what they want, by what you did last *Sunday*, either it will extirpate the Protestant Religion, or extirpate the old man you talk of. My opinion is, the King knows where the fore place is, and he will agree with you in *Sunday's* Vote, and extirpate Popery; and I would say, I will supply the King, and let the World see it, and those that trust you see it.

Mr *Garroway*.] I differ from *Birch*. I am not for misleading the House, in a previous Vote. That is the way to be caught by surprize. To break in now, when the people have no satisfaction, and the Navy might have supported itself by what you gave—Let it not be construed here, but by a sober Debate, and not go off without a Question; but such a Question as the King

may know where we are. I will offer you some words, viz. "That this House will not enter upon consideration, to charge the subjects, till effectual security be taken to preserve the King's Protestant subjects, the Priests executed, and the Lords in the *Tower* tryed."

Colonel *Birch*.] I think that *Garroway* did reflect upon me. I acknowledged, that, as long as we have hope left, I never refused Money; but till we are satisfied of the abuses, &c. I am resolved never to give a penny.

Mr *Williams*.] Did I think that giving Money would secure you, I would give it; but I think this will have a contrary effect. If you promise Money before you have redress, &c. you will do as the last Parliament did, and be put off as the last Parliament was, when they would give no more. That House promised in vain, and paid in vain, and when men with bold faces could ask the same thing again, they must have the same Answer. There was Money given for the *French* War, and then to disband the Army, and now to disband it again: Pray, let us see that Army disbanded. Till that Army be disbanded, a Member ought to be questioned that asks Money.

Lord *Carvendish*.] I will venture to say something in this matter; though I fear I shall please nobody. I was ever of opinion, that he is not fit to serve the King in Council, that has not the good opinion of those here. Money is now asked for a Summer-guard of ships, and paying off *Narborough's* men. You are told, "That all the King's Revenue is anticipated, &c." but I see no Reason to abandon all thoughts of public safety, because all things are not yet done. No man in this House can say so much of ill management, &c. as I can think. The Ministers, and those Pensioners, and whatever we groaned under, is from the ill maxims of Government that we have groaned under. Those who gave Money, &c. and had no account, &c. I thank God, we are delivered of that Parliament, and one of those Ministers is laid aside. Some remain still in the King's Council, that I have Reason not to think well of, and it will become your wisdom to press forward those Addresses you have sent. But because
you

you have not every thing done on a sudden, will you put a Negative on the King's Message? There is no Reason for that, or why we should be ruined whilst we consider to punish offenders. I have examined myself, and if I were not in the state I am, I should be of the same opinion.

Sir *Edward Dering.*] No man has directly moved you for a Supply. I except not against any one of the ways proposed. When you enquire closely into Miscarriages, you may see how you came into them, and how you may go out, and I would adjourn the Debate to *Monday*.

Sir *George Hungerford.*] It is not seasonable to adjourn the Debate. I think we had not sat here, but for payment off of the clamour of the Army and Fleet. We are told, that the affairs of *Christendom* are now on foot, since the general Peace, and therefore a Navy is necessary. The best way of treating, &c. is when they see a good Union, that they may trust us. We have deceived the *Dutch*, in taking the *Smyrna* Fleet; and the King owning my Lord Treasurer's Letters, that treated for a Peace, for Money, with the *French*, when we were preparing for War, &c. When they see a confidence betwixt the King and this House, they will trust us.

Sir *Eliab Harvey.*] If all our Grievances could be redressed by *Monday* next, then I am of opinion to adjourn the Debate to *Monday*. We have new Counsellors, but I fear we have so many old ones, that we are on the same bottom still. Till we are on a steady bottom at home, nobody will have to do with us. The *French* Ambassador is so much at Court, that the World thinks us upon that bottom still—35,000*l.* will set out the Fleet in good condition, with two suits of sails and rigging, and what is become of all this Money we gave? We cannot set out twenty ships, and so the Nation is ruined and undone. All the Representation of the State of the Navy is entered into the Journal, Stores and Ordnance. We have not made one step towards the security of the Protestant Religion, nor is one Popish Priest hanged. Therefore I would not adjourn the Debate.

Mr *Vaughan.*] The abuses of the Kingdom are put
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upon the Parliament. It is now tottering, and if it hang at this pass, it will fall. The King may say how sure he is of Money, when there is a redress of Grievances. The State of the Nation has been long talked of to be taken into consideration. Had that been done, we had not been about to ask what may possibly be now denied. I would not have a Negative put upon Money; but if it be not necessary, I would do as in *Edw. III's* time; make up your Articles, and when those are redressed, then I would give Money.

Lord *Ruffel*.] I have always been as backward in giving Money as any man; but, when necessity requires, as forward. If now you put a Negative, &c. the consequence will be the clamours of thousands of Seamen. I agree for a day to consider of the King's Message, and in a little time you will see whether Grievances will be redressed, or not.

Sir *William Hickman*.] Money is not insisted on, but a time set to consider of the Message, a week, or such a time; and I believe the King will not so easily leap out of the hands of his Parliament.

Sir *Henry Capel*.] I have but one Argument for setting a day, and that is, common safety. Every man cries out, "Let us have a Fleet." (*Several cried out, "No, no."*)

Colonel *Titus*.] No doubt, but a great many Gentlemen are for giving Money; and those that think that there has not been Money enough given, are for giving more. There was twice as much Money given, the last Parliament, to bring us to this pass, as formerly was to conquer *France, Wales, and Scotland* twice. All the Revenue of the Crown is disposed of for Spending-money, and the Crown and the Government maintained out of your Estates. Those that see no fault in the Government already, do not enquire into things; and those too may be for Money. But when I consider all those tragical expressions which induced you to give Money, and that squandered away, I must make a little stand at Money. As for the time of giving Money, is it a time that we have satisfaction in what we desired? Have we
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satisfaction in any one thing that we desire? We have no Answer to our Address for removal of the Duke of *Lauderdale*. The greatest malversation is not only defended, in the Pardon granted to Lord *Danby*, but they encourage such for the future, and no punishment will be for any such rapine for the future; and it may be, some will do yet worse, and so Parliaments will be no farther useful, than to give Money: As if they were called only for Money, and not Advice. In the 50th of *Edw. III*, the Crown was in wonderful necessities, but such as the King's Ministers put him into: Money was demanded, and the Parliament answered, "Saving their Allegiance, if the Money they had given had been well employed, the King had been the richest Prince in *Christendom*, and the very Fines upon Offenders would supply him." I move as before.

Mr *Powle*.] I have done nothing to deceive you in my carriage here, I hope, heretofore; and I hope I shall not. I can testify, that I have heard the King solemnly declare, "That he will never have any person in his service, that his people have just exceptions against; to satisfy his people." But I find there is a mistake in this Motion of Supply; but it is not too early to consider what to do. A great deal is expected from the King, and no man can be secure, till a Vote from this House pass. I like the Motion, and I would let the King know what you desire. Whoever does desire to serve you, will do it with greater ease. Let us know what is expected of the King. His own Grace and Favour will give you satisfaction. Take some short day to consider of it, and put not off giving the King good Counsel when he is willing to receive it. Appoint *Monday* next.

Mr *Sacheverell*.] All Persons seem to agree, not to give Money, till that be done. *Powle* says, "You ought to tell the King what you would have done." I am always for plain *English*, and I would speak so to the King as he may understand these are our Grievances. If he please to remove them, we are free; till then, we cannot give Money, to be perverted as formerly. The execution of the

Priests, Justice against the Lords in the *Tower*, and Security of the King's Protestant Subjects; else it is in vain to do any thing. In this you will acquit yourselves to all the World; else you do not. I would have Gentlemen consider, that, if you pay the Fleet before the Army be disbanded, the Army may be recontinued, and I hope the Privy Council will tell the King, "That the Nation is not safe, as long as the Duke of *Lauderdale* is about the King;" and a great many other matters; but it is not parliamentary to inform the King of any thing debated here. It is impossible to have Grievances redressed by *Monday* come seven-night, and then to consider this Message, as is moved. I would adjourn it longer. The Lords Tryals will last ten days. If you adjourn it to *Monday*, &c. you will have another day lost in Debate of adjourning it farther. I would therefore adjourn it to *Monday* fortnight.

The Debate was adjourned to *Monday* seven-night.

Thursday, May 15.

Sir *John Trevor* reports, from the Committee, appointed to joint with the Committee of Lords, &c. That the Committee had made two Propositions to the Committee of Lords: [First, That they did desire to see the Commission of the Lord High Steward, and the Commissions to former Lords High Stewards.

Secondly, That they did desire to know, what Resolutions had been taken about the Lords Spiritual being present or absent at the Tryals of the Lords impeached.

To the first Proposition, the Lords of the Committee produced Copies of the Commissions to the Lords Stewards, for the several Tryals of the Lord *Morley*, and the Lord *Cornwallis*: But those Tryals were out of Parliament. Next, they produced the Copy of the Commission for the Tryal of the Earl of *Pembroke*, for Murder; which Tryal was before the Peers in Parliament, and so differed from the two former Commissions.

The Lords did farther produce a Copy of the Commission passed under the Great Seal, for the Tryal of *Thomas* Earl of *Danby*, and also a form of the Commission for the Tryal of the five other Lords impeached—And farther declared to the Committee, "That a Lord High Steward was made *pro hac vice* only: That notwithstanding the making of a Lord High Steward, the Court remained the same, and was not thereby altered, but still remained the Court of Peers in Parliament: That the Lord High Steward

Steward was but as a Speaker, or Chairman, for the more orderly proceedings at the Tryals."

As to the second Proposition, the Lords communicated to the Committee a Resolution of the House of Peers, *in hæc verba* :

"*Die Martis, 13 Maii, 1679.*

"*Resolved*, By the Lords Spiritual and Temporal, in Parliament assembled, That the Lords Spiritual have a Right to stay in Court in capital Cases, till such time as Judgment of Death comes to be pronounced."

The Lords explained themselves, " That the meaning of the above Resolution is, That the Lords Spiritual have a Right to stay and sit in Court, till the Court proceed to the Vote of Guilty, or Not guilty ?"

The second Proposition, being a matter of great weight and consideration, the Committee of the Commons had commanded him to report it to the House, in order to receive their directions for their farther Proceedings. *Journal of the Day.*

[Debate.]

Sir *Thomas Clarges.*] It is necessary that you leave something upon your Books of what the Lords have resolved, viz. " That the Lords may proceed to Tryal upon Impeachments without a Lord High Steward."

Sir *William Coventry.*] I would have the whole settlement of the matter entered into the Journal, under one draught and regulation of it, for posterity to be guided by.

Sir *Robert Howard.*] I hear that the Lords are going to strike at any method of Proceeding in Impeachments of the House of Commons. Their first Vote is, " That the Bishops shall not stay in Court at any sentence of Guilty, or Not guilty, &c." This is a dark Text, and should have a Commentary. This does nothing to the case of Lord *Danby*; it seems, they take not voting to the validity, or invalidity of his Pardon, to be life or death. This gives occasion to the Lords Spiritual to judge any Pardon good. If the Pardon be not a good Plea, the charge is confessed, and there remains nothing but execution to be demanded, and the Spiritual Lords call this nothing but matter of Law. Now their Canons are turned upon themselves. I have heard say, that if a Bishop kills a man, he is to have one Tryal in Parliament-time, and another out

of Parliament; he is to be tryed by twelve men of the neighbourhood. If this be so, no man shall be tryed, but by his Peers, if Bishops sit. This is taken generally so far for granted, that Mr *Selden* says, "They sit as Barons in Parliament, as *Jure Regis*, and they are to withdraw from the Tryals." If they were Peers in Parliament, it would be in their Blood and Generation, and they must sit to appear upon Blood and Generation. This seems, that they who exclude themselves from judging in matters of Blood, by Canons and all Gospel business, have some reservation upon this, to show an object of kindness, rather than Justice. Then see the state of this case. Say they, "It is Guilty, or Not guilty." But in the Plea of his Pardon, it is nothing; it is but only a point of Law. If that be over-ruled, he is left to come over again to Tryal. In short, that they who should avoid Seats of Blood, should press this in particulars that they deny in the universal, is strange. If in a surreptitious Pardon the Bishops come to help men, the Law of *England* is in the power of one body of men, and the Statute 25 *Edw. III.* will be wholly voided, if the Party be so well instructed as to plead a Pardon. I would therefore give the Committee instructions, wholly to disagree with the Lords, as an Error of Judgment, if the Bishops sit, and so the Judgment may be reversed.

[Sir *Thomas Meres*, to what *Howard* says.] The Bishops press not this; they leave it to the Lords. I know not that the Bishops said one word in this matter. Now, when the Lords judge, whether this Pardon be good, or not, there it is you would have it proposed, whether the Bishops shall withdraw then? I conceive, that the Lords take it, as you do, that if the Pardon be good, or bad, it is decisive, whether life or death. The same reason carries it by their Canons. They are not to sit, for it is life or death. I believe you will have the thing explained to-morrow, and carry the point.

[Sir *William Harbord*.] I desire not to be governed by the Canons of the Church, but by the Laws of *England*. When you sent up your Message to imprison Lord *Danby*,
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the Bishops were very instrumental to save him from being committed. I appeal, if they voted not against the Law of *England*? The thing must be so settled, that posterity may be safe. But suppose the Bishops exclude themselves, as is said; if they judge to Misdemeanor, if that man lose his life by it, or be saved, they judge in matter of fact. If the Lords come to some determination, &c. we may be safe. I would set this matter without dispute.

Mr *Sacheverell*.] Consider a little the state of the case. It is a great point, and I would settle it so, as never to trouble the House more. It is all one to me whether they proceed in any part, or the whole. They have power to acquit, and not condemn. I say, the Bishops ought not to be present by the Law of *England*. If the offences of Lord *Danby* turn to Misdemeanor, it is as dangerous as the Judgment itself. I would turn it thus, "That in Capital Cases the Lords Spiritual have no Vote at all, in Proceedings of Impeachment from the House of Commons."

Serjeant *Maynard*.] I look upon the whole matter to be upon the old string, viz. to keep the five Lords from Tryal. A great man may be pardoned *toties quoties* as he can get a Pardon, let the offences be ever so great, if this Pardon be good. The matter is now the Bishops, &c. If their meaning be to deliver their Opinion, "That this is a good Pardon, or no," it is all one, whether "Guilty, or Not guilty," of the charge. Now, was it ever seen that a Judge has power of one part of the Law, and not the other? To do Justice on one side, and not on the other? To save, and not to condemn? The main end of all these things looks to another purpose. They may say, he shall be acquitted, but not condemned, and so all the Justice of the Lords is shut up against offenders. I would therefore have an express Declaration from the Lords, "Whether the Bishops shall judge in Lord *Danby*'s Pardon?" Be pleased therefore to appoint your Committee to offer their Reasons for a farther explanation of this Vote, to the Lords, and above-board. I did hear that one Lord should say, "That he

was for the Bishops voting, &c. because they would acquit Lord *Danby*."

Sir *Robert Carr*.] I will speak to matter of fact only. Your Committee finding only, that the Bishops should stay in Court till the Temporal Lords voted, Guilty, or Not guilty, desired to know, "Whether their Judgment upon Lord *Danby*'s Pardon was taken for Guilty, or Not guilty?" One of the Lords said, "He was for the Bishops voting in the Pardon because they were for Lord *Danby*."

Sir *Thomas Clarges*.] For aught we know, the five Lords have five Pardons. The Law says, "That the King can do no ministerial Act." But the King took the Seal from the Chancellor and sealed *Danby*'s Pardon. The five Lords may, at the Bar, produce such Pardons as this. It is plain, that this Judgment of the Bishops is a Judgment in part, to acquit and not condemn, so that all this Proceeding upon the Pardon will be *coram non judice*. So that if the Bishops will take all this upon their shoulders to obstruct the Justice of the Nation, let them bear it themselves.

Sir *Thomas Lee*.] Two or three things have startled me much. I find this is a novel thing. In Lord *Strafford*'s case, there was no Question of the Right of the Bishops, and this matter never came in question. The Lords did commit *Danby* early in this Parliament, and said, "It was fit a new Parliament should correct the Error of the last." This may prove an Error in the proceeding, if the Bishops judge the Pardon, and the next Parliament may restore *Danby*. As long as we keep old methods of proceedings, there is no harm. The Lords say, "the Bishops may be in Court," but say not, so long, and no longer—In all cases, as they call themselves "the Great Court," they will make what Rules they please, to be observed. But those that are Judges of methods, by the same reason may be Judges of life and death, and dispense with their own Canons. I would have this matter stay, till the Kingdom is at better leisure to dispute it. If the Lords had said, "That the Bishops shall withdraw, or stay so long,

long, and no longer," yet I cannot be satisfied, if they shall say, "The Bishops shall withdraw for this time, and may resume it in another." I would not make one step till this matter be adjusted, and go on with no Tryals.

Sir *William Coventry*.] You have been told what has been done in the case of Lord *Strafford*. There was a Committee then to consider, whether to try him in the Lords House; for said the Lords, "The Bishops will be absent, and the Barons may sit upon their Benches." For this that is the proper Question before you was, "this stay," stirred by your Committee. One or two of the Lords said, "They would move their House in it." I see no fruit of voting any thing, till you see how the Lords will proceed upon it, and possibly you may have satisfaction from the Lords, and you may avoid doing it. It is necessary only to have your Committee at liberty to urge this to the Lords to-morrow.

Sir *Francis Winnington*.] The Debate now is the Jurisdiction of the Lords in Proceeding, &c. I am unwilling to give offence to the Lords, or to let them have a Jurisdiction unusual. When the Question was proposed, "Whether the Bishops should withdraw," it was answered, "They should, at the Vote of Guilty, or Not guilty." But now, so far as the thing stands, we must look to our Rights in Proceedings. If that be a reason for their stay, that the Bishops may countenance the Pardon, it is in vain to proceed in any matters of Parliament, till that be settled. I will not enter into the Debate, how far the Bishops may be present in point of Blood. I propose this as matter of Jurisdiction. If we see the Lords Proceedings not coherent to Law, we are as interested in that as the Lords are in the Judgment. When we think of the Chancellor's Speech, that this is the cogent time, that all is at stake, I did not think these difficulties would arise. Those who raise them will do it for the five Lords in the *Tower*, as well as this Lord. This, to my understanding, extends to all Pleas, Guilty or Not guilty, to life and death, "No:"

But

But to pardon or not pardon, "Yes." But surely the Bishops are better versed in the Art of Disputing, than to stick to that. They will not judge what the life of a man depends upon, but to save him. If I knew their meaning, whether they would do this in all cases—Whether in a Pardon only, or where life and death is immediately judged. If we meet with this, it is our inheritance we have in the methods of the Court in their Proceedings, as this is of Judgment, and we may interest ourselves in it.

Mr *Vaughan*.] This thing is of that consequence, and one of the fatalest and most absurd things I ever saw. From *Edw. III's* time to the Tryal of Lord *Pembroke**, the Bishops never sat in Capital Judgments, and they have formerly made a Declaration of Parliament, that they ought not to sit. The novelty of the thing makes me jealous, that it is for some particular end of their own. They are Judges for themselves in this matter, in the Lords House, and vote. If they were absent, you would have another account of it. They pretend to sit upon this Pardon of Lord *Danby*, and I pray God they sit not to pass Judgment upon their whole Function!

Mr *Powle*.] The House is possessed of the matter only, I will speak to the manner. If you dispute with the Lords about Rights and Privileges of their House, it will be dilatory, and I would not enter upon it now. This day this proposal was made to the Lords, and they seemed to intimate that they would move it. If it prove contrary to-morrow to your desire, then I would confer with the Lords about it. But if they tell you, "The Bishops will not meddle with it," you may then decline it. You may instruct your Committee to insist upon having a resolution from the Lords to-morrow. But for to-day, I would lay it aside.

Sir *William Coventry*.] If I had an intention to save the Lords in the *Tower*, I would contest with the Lords upon their Jurisdiction in this matter; but if you put it as it is moved, it will put an end to all things.

* For Manslaughter.

Sir Thomas Lee.] I do say, that, next to my fears of the Pope's Jurisdiction, I apprehend heightening the Lords Jurisdiction.

Mr Sacheverell.] If in this case Gentlemen take a little more liberty than ordinary, you may pardon them. If the Bishops tell you, "They will be absent," does that settle the Jurisdiction? Settle the point so that their voluntary withdrawing now does not entail their Jurisdiction upon you for ever.

Resolved, That it be given as an instruction to the Committee, &c. That they insist upon it, that the Lords Spiritual ought not to have any Vote in any Proceeding upon the Impeachments against the Lords in the *Tower* *.

The Bill to disable the Duke of York to inherit the Imperial Crown of this Realm, was called for, and read the first time †.

* It is easy to see, that all this contest about the Bishops Vote arose from a presumption, that their weight would turn the scale, and that both Parties were equally certain into which it would be thrown. *Ralph*.

The truth was, the Bishops desired to have withdrawn, but the King would not suffer it. He was so set on maintaining the Pardon, that he would not venture such a point on the Votes of the Temporal Lords; and he told the Bishops, "They must stick to him, and to his Prerogative, as they would expect that he should stick to them, if they came to be pushed at." By this means they were exposed to the popular fury. *Burnet*.

† The substance of this Bill, since so famous in the World by the name of the Exclusion-Bill, was as follows:

"First, That James Duke of York, Albany, and Ulster, should be incapable of inheriting the Crowns of England, Scotland, and Ireland, with their dependences, and of enjoying any of the Titles, Rights, Prerogatives, and Revenues belonging to the said Crowns.

"Secondly, That in case his Ma-

jesty should happen to die, or resign his Dominions, they should devolve to the person next in Succession, in the same manner as if the Duke was dead.

"Thirdly, That all Acts of Sovereignty and Royalty which that Prince might then happen to perform, were not only declared void, but to be High Treason, and punishable as such.

"Fourthly, That if any one, at any time whatsoever, should endeavour to bring the said Duke into any of the forementioned Dominions, or correspond with him in order to make him inherit, he should be guilty of High Treason.

"Fifthly, That if the Duke himself ever returned into any of these Dominions, considering the mischiefs that must ensue, he should be looked upon as guilty of the same offence, and all persons were authorized, and required to seize upon, and imprison him, and in case of resistance made by him or his adherents, to subdue them by force of Arms."

It is remarkable, that even Mr Algernon Sidney calls this "A severe Bill." Had it taken place,

it

[Debate.]

Sir *John Trevor*.] First, consider, whether the Bill be drawn according to your Order, before you give it a second reading. You now are going to dispose of the most valuable thing in the World, the Crown of *England*. But I cannot consent to this Bill; it is not drawn according to your Order. This does not only disable the Duke from inheriting the Crown of *England*, but banishes him. The Parliament may dispose of the Crown, but cannot, without cause, banish him. I cannot consent to this Bill, but I would not throw it out, but let it lie upon the Table. Let Gentlemen consider well of it at this time; but I cannot consent to reading it a second time.

Sir *Robert Peyton*.] I move, that it may have a second reading in a full House on *Saturday*.

Mr *Colt*.] If you lay it aside without a day, you will give as great encouragement to Popery, as you have given discouragement on *Sunday* last; therefore I am for a second reading on *Saturday*.

Mr *Powle*.] This Bill is of great consideration, and *Saturday* is too soon for a second reading. If ever this Bill be put in execution, it will cause great disturbance

it is easy to see, that it would have been attended with difficulties scarce surmountable. For, first, we may observe, that by this limitation, the Crown would have devolved, at King *Charles's* death, in 1685, on the Duke of *York's* eldest daughter, the Princess of *Orange*. But, secondly, when the Duke had a son, as he had three years after, the Crown must then have reverted to that son, as Heir male; and, not to mention the improbability of the House of *Orange* quitting the Authority with which they had been invested (at least without all the miseries of Civil War) yet Papists in general were not excluded, as they have been since: And if the son had succeeded to the Title, the father would probably have retained the Power,

Happy, therefore, was it for the People of this Land, that neither the Exclusion nor the Limitations took effect, and that King *James* was no less able than willing to act in such a violent and arbitrary manner, as obliged the Nation to take the most effectual means of preventing it for the future, by calling to their assistance the Prince of *Orange*, and afterwards giving, by Act of Parliament, an hereditary Right to the House of *Hanover*, as long as it continues Protestant. So much real Good did Providence produce from apparent Evil; and so were these disappointments of our Patriot Ancestors most abundantly recompensed (as we trust) to their latest Posterity.

in the Kingdom. If we be too hasty in it, both we and our posterity may repent it.

Sir *Thomas Meres*.] If you do any thing in this matter, put it off your hands. If you will not do this, do another thing. Something must be done.

The Bill was ordered to be read a second time, on *Monday*.

In the Afternoon

Counsel was heard to the affirming or annulling the Judgment given by the Judges in the Case of Sir *Samuel Barnardiston*, and the Sheriff of *Suffolk*, upon a false Return *.

Mr *Pollexfen*, Counsel for the Reversal of the Judgment †.] An Action upon the Case was brought upon a Writ directed to Mr *Soames*, High Sheriff of *Suffolk*, to elect a Knight of the Shire in the room of Sir *Henry North*, deceased. The Sheriff returned Sir *Samuel Barnardiston* duly elected, but caused a false Return also to be made of Lord *Huntingtower* and *Barnardiston*; which put *Barnardiston* to great charges. An Action upon the Case was brought against the Sheriff, &c. and *Barnardiston* had a Verdict and Damages, and a Judgment in the *King's-Bench* for the Plaintiff. A Writ of Error is brought to the Exchequer-Chamber, where, upon divers Arguments, the Judgments were reversed. Upon the whole matter, five Judges were for the Plaintiff, and six for the Defendant; *Rainsford* gave no opinion; so that against this Reversal is the complaint. What I am to show is the wrongful Reversal. I take it, by Rules of Law, that any man voluntarily, unjustly, maliciously, and without cause, being injured in a false Return, the party may have remedy by an Action upon the Case. It is impossible that two persons can be rightfully elected. For a man to be kept from the execution of an Office of the greatest Dignity, by a miscarriage of the Sheriff, and put to the trouble and charge of petitioning the House, surely this is a wrong sufficient: And this false Return was the Cause. Words, though otherwise not actionable, yet where they are to the reproach of a man in his Honour and Dignity, are so. This in the Case of a Parliament-man is much more a Cause of Action. If it be in the power of a Sheriff to make such false and undue Returns, it may be such a mischief and inconvenience as strikes at the being of Parliament. No sober man will venture that service, when he must try over his Election. This, if permitted, will deter all sober men from standing. This may take

* This being in the Committee of Privileges and Elections, no Notice is taken of it in the Journal. † Lord Chief Justice, in 1688.

away the very being of Parliaments; if Sheriffs throughout *England* shall combine, there may be no Parliament, and their numbers are not so many, but they may possibly combine (and we know who makes Sheriffs.) Suppose popish Sheriffs, and they would return so many to make the House of their Religion, and Double Returns of the rest. Thus you may have a Parliament, and a legal Parliament too. This is a Judgment of so great consequence, that it deserves your consideration.

Sir *Creswell Levens*, against the Reversal.] We say, this Judgment was well reversed in the Exchequer Chamber, and it was ill given in the *King's Bench*; because never such a one was given before. We know we walk safely, when in the same steps that others have gone in before us. In Mr *Neville's* case, in 1655, he brought an Action that could not be maintained. He was elected, and omitted out of the Return, and that was removed into Parliament as an Action never brought before. This Action, when brought, the Judges were not capable to proceed in, as being to be tryed in Parliament only, and the Judges ought not to meddle with it, and would not presume to give such advice as should not be binding. In 3 *Edw. III.* Records, *Fo. 18. & 19.* an Information was against the Bishop of *Winchester* for absenting himself from the Lords House; the *King's Bench* was hasty in their Judgment—by original Action—Say the Judges, “How can the King maintain this Action?”—It is an injury to the whole Kingdom, and every man must sue him for his non-attendance, for he is not the King's Member. 1 *Char.* a Judgment was given in the *King's Bench*, and reversed by Writ of Error, because they had nothing to do with matters relating to the House of Commons. In the Statute of *Hen. VI.* if a Sheriff misbehave himself, there is a Penalty upon him, so much to the Party, and the King, &c. How unreasonable would it be, to desire an Act of Parliament for an Action of Debt, for goods sold! If the *King's Bench* meddle with one Parliament-matter, they may bring in all. Suppose an Action be brought in the *King's Bench*, that the Person was unjustly cited to the Parlaiment for Breach of Privilege against a Member; or suppose an Action be brought against a Member for giving a Protection, whereby I have lost my debt; surely the determination of this is in Parliament, and not there. This Action cannot lie in this case, because the Sheriff has no other way, but by a Double Return, to excuse himself. They say, “That the Sheriff has power to give an Oath, and therefore has discrimination of who are Freeholders.” But the Statute says not, “Whoever swears that he has 40s. a year, is a Freeholder,” but “he who really has so.” Suppose one swears
“that

"that he has 40s. a year," and another "that he has not 40s. a year," or "that the Party has got it fraudulently," and the Sheriff has not time to make his Returns in this case, as in other Writs, for want of time to examine it—Should this be, there would be great disorder in Elections, and the Sheriff has not time of deliberation: Therefore, where the matter is doubtful, the Parliament is the proper place to decide it in. It did appear in this Election, that there was great scrutiny, and it was not carried by many voices. And must the Sheriff therefore hastily judge it? Here not a Return made to the House of Commons, and was it not the business, and is it not the business, of the House of Commons to decide it? The House of Commons has judged this Return, and given Judgment upon it, and the House found no fault with it. They determined the Election, and found not the Sheriff culpable nor blameable, and punished him not. This cannot be said to be an unlawful thing, when they had judged it lawful; and what is the Judgment of the House of Commons, is the Law of Elections. But what is said, "this Return was made falsely and maliciously," will not bear an Action—But there must be another ingredient—Suppose a tree shelters a man's house, and I cut it down, and his House is blown down, and he charges me with maliciously cutting it down—The last reason is in the manner of the Action: "He is kept out from sitting in the House, and put to charges, &c." I answer, he came not to sit here for his own benefit, but for the Kingdom's. At the same rate; every one of the Electors might bring an Action against the Sheriff. He has brought his Action against the Sheriff for keeping him out of the House, and for charges to get into the House. For this reason, I conceive that the Judgment was ill given in the *King's Bench*, and well reversed in the Exchequer Chamber.

Mr Holt, against the Reversal.] The Law gives no Action of the Case against a Judge; you cannot have an Action of the Case against a Grand Jury-man, for making or causing his neighbour to be indicted. This is done in a public, and not clandestine manner, *in conspectu omnium*, and the Law suffers no averment against his honesty and integrity. There is no profit in being a Member of Parliament; it is an Office of burden and attendance; there is no profit, and therefore no loss. A Justice of the Peace was called "an ass, a coxcomb, a buffle-headed Justice, &c." an Action of the Case was brought in the *King's Bench*, and it was a great Debate, &c. that an Action could not lie, because a Justice of the Peace has no profit by it, and therefore no loss. Lord Coke speaks of *damnum sine injuriâ*. *Barnardiston* might have chosen whether he would be a Member of Parliament, or no. It was

his own inclination, and therefore there was no necessity. The Sheriff doubts the Election, and therefore makes a Double Return; and it cannot be said, "That the Sheriff does it falsely and maliciously," when he doubts, and no Action of the Case can be brought against him; it is not an Office, or Tally, or Profit, but voluntary, &c. I doubt, that the Return at Common Law is no Return. The Judges therefore must not take cognizance of the thing, of a Double Return, because the Parliament does it only. Suppose, as has been alleged, a Popish Parliament should be returned, (which God forbid!) *Westminster-Hall* cannot judge of that. In *Elliot's Case*, &c. because it touched or concerned the Parliament, though it was a Battery, that Judgment was reversed in the House of Lords; and better a cause of this nature should be utterly lost, than the Privilege of Parliament invaded.

Mr *Pollexfen*.] The first Objection is, "That no such Action was ever brought." But we find such new contrivances, that there must be new Actions for remedy; as often as new Cases arise. There were always Writs framed for Actions of the Case, that the people might not say, that the Law was defective. In *Jones's* and *Bulstrode's* Reports, there is an Action of the Case for accusing a man wrongfully of Treason. There was lately an Action of the Case brought for seducing a girl to get her hair to make perriwigs, which is no Felony. The Case of buying and selling Negroes. New Actions must be brought for new cheats and tricks. I cannot say how old Double Returns in Parliament are; but I have heard a Parliament-man say, "That there have been more, in twenty years last past, than in all the world before." Suppose, in the Ecclesiastical Court, an Apparitor, or Summoner, returns a Person summoned, that he has not summoned, the Law judges it, though it be in another Court, and if the Party be damaged, he has an Action upon the Case. As for Sir *John Elliot's* case, &c. that was for matters in Parliament; that was for words against the King, and laying hands upon the Speaker. But admitting that was in Parliament, is this case of *Barnardiston* a matter of Right in Parliament, of liberty of Speech? —The Return is not into Parliament: I take it, that gives a difference (*Dyer* 168.) Colonel *King* exhibited a Petition against Sir *Edward Lake* at the Committee of Grievances, which set forth Misdemeanors, &c. Afterwards, an Action was brought against *King*, for a scandalous Petition, &c. Though this was in Parliament, yet it concerning not Members of Parliament, it was judged for the Plaintiff, because he could not justify the printing of his Petition. As for that of 3 *Edw. III.*, it makes not one way nor other. As to the Statute of *Hen. VI.* objected, &c. it is frequent,

quent, that where there is remedy by Statute Law, there is remedy at Common Law too, as in a multitude of Cases.

Sir *Creswell Levens*.] In *Smith's* and *Crasshaw's* Case there was an Action upon the Case brought for indicting a man for High Treason, and Felony, both Capital. It cost three years time before Judgment was got. But I challenge any man to show me a Case of an Action brought for any matter depending in Parliament. In the Case of Sir *Edward Lake*, and Colonel *King*, an Action was brought for Papers delivered to Parliament-men at the door, which were Libels, &c. But what relates that Case to this, which was a false Return in the Parliament House? This Petition was but a Paper of information of his Case delivered to Parliament-men. It may as well be objected, that 40s. a year for a Freehold, is too little to make him an Elector, as that the Penalty of the Statute is too little for a false Return. The Courts of *Westminster-Hall* cannot alter the Law. It is for the Parliament to do it; and shall Privilege of Parliament be controuled by *Westminster-Hall*? If there be inconvenience in it, you are the judges of it. In the case of *Lake* and *King*, *Lake* had printed the Petition before he presented it to Parliament, but *King* could not have brought his Action after it had been depending. Another Action was brought by *Lake* against *King*, for printing a Petition, &c. Said *King*, "I presented my Petition before I printed it, and then I printed it." And so no Action did lie in the case.

[Debate.]

Serjeant *Maynard*.] I would put it upon the learned Gentlemen to show you any Action upon the Case brought before *Hen. VIII's* time. As for that Case cited, of a Writ in a Sheriff's pocket, and not executed, an Action upon the Case was brought. That which is proper before you to consider, is the Grievance—He hath his proper remedy at the Lords House, by Writ of Error. The Action was not brought upon the Double Return, but for the Sheriff's maliciously being a Party. This is proper to be remedied. You may redress it by Act of Parliament, but not judge whether it be right, or no.

Serjeant *Stroude*.] This is the first cause of this nature, that ever came hither, in matter of Law. Here is not a word of Corruption or Bribery in it, &c.

Friday, May 16.

Some of the Amendments made by the Lords to the Bill of *Habeas Corpus*, (*which see in the Journal*,) were this day rejected, and others agreed to by the Commons.

Saturday, May 17.

Sir *John Trevor* reports, from the Committee of Lords and Commons, [That the Lords had communicated to the Committee certain Proceedings of the House of Lords, which he read in his place, in these words :

“ *May 16, 1679.*

“ *Resolved, &c.* That *Thursday* next be appointed to begin the Tryal of the five Lords in the *Tower*, &c.

“ After which Resolution passed, The Lords Spiritual asked the leave of the House, “ That they might withdraw themselves from the Tryals of the said Lords, with the liberty of entering their usual Protestation.” And that the Committee of the House did desire the direction of the House, how they should proceed therein.]

[Debate.]

Mr *Sacheverell*.] If I understand the Report right, this is clearly in contradiction to what both you and the Lords have agreed upon your Books already. The point of time of Tryals was the last thing to be adjusted. I farther observe, that the Lords have not in any sort agreed that the Bishops have no Votes in the Tryal of the five Lords. The Lords Spiritual are so far from it, that they ask leave to be absent. As to that point, which the Committee did insist upon, I think the Lords have made no Answer. I conclude, that the Lords apprehend, very rightly, that, should the Lords make a difference between the five Lords and Lord *Danby*, that would look too broad in the eyes of the Nation, that you should not argue the Pardon; which I value more than any ten Lords Tryals. If these five Lords only are taken out of the way, and you confirm this Pardon to Lord *Danby*, you make the King absolute. Any man may then embezzle the King's Revenue, ships, and stores, and may produce a Pardon. And what difference is there between that, and Arbitrary Government without Law? I would show this to the
Lords,

Lords, as the great concern of the Nation, and that the Commons will never give that Power away; if they do, they are undone. If once you admit this Pardon, in bar of Justice, against the Commons, who shall call them to account, when they have a Pardon to help them?—And new Judges will be taken to assist to make it good, and there is an end of all. You have demanded Judgment of the Lords about the Pardon, &c. and have had no Answer; and when the Tryal of the five Lords is over, they will settle the Pardon (by the strength of *Danby's* friends in the Lords House) and there is a Precedent upon you eternally. No; I would let the Lords know, that we value settling this Pardon, more than any five Lords, and that the Commons will not give them such a handle to undo themselves; and let it lie at the Lords door. And I would let the Lords know, “That it is contrary to their Agreement, and that, till the nature of the Pardon be tryed, we cannot proceed.”

Sir Robert Howard.] What has been said, is so well, that I shall repeat no Arguments; but I will come closer to the distinction that is made, and by that distinction it will appear closer to you, what the thing is. But here is a recedency in the Bishops; but the receding is to such and such Lords, but not to Lord *Danby*. When you sent up the Impeachments, the rest of the Lords pleaded guilty, or not guilty. *Danby* takes the choice of another advantage, viz. “That of his Pardon, which he will rely upon.” You say then, “That his Plea was guilty, for he confesses the Charge by pleading his Pardon.” Upon which you demand Judgment. If his Pardon be good, he has the benefit of it; if not good, nothing remains but sentence. Now this is, by the recedency of the Lords Spiritual, a kind of tryal of skill. When the Pardon is good, or not good, there is a reservation of Guilty, or Not guilty. This shall only in the consequence be to stay Judgment. This is a good way to tie up all declaratory Treason. I only add, if this is taken here, that this is a Plea of Pardon, and by which *Danby* must stand, then the Lords Spiritual ought not to be present. It is plain that the Bishops

will sit upon this of the Pardon, and not on the other five Lords, &c. You ought to be clear first in this case. We take *Danby's* Plea to be his Issue; and if so, you ought not to proceed till this is determined.

Sir Thomas Meres.] I agree that the Bishops ought as equally to withdraw in one Tryal as the other. I agree that it is the interest of this House and *England* that the Pardon should not stand good. There are six Lords concerned in the Tryal, in the Lords House, and the Bishops have complied with five of the six to withdraw; and I see nothing but that the Lords House may comply with five of the six—I do not say, but that there is a shorter way to be rid of *Danby* and his Pardon. If fairly and regularly the five Lords may be tryed, we may, for discountenancing of Popery, go on with them and finish something.

Mr Montagu.] I have been silent in this matter of Lord *Danby*, out of respect to the House, lest it should look like private pique against him, &c. But since, by his Pardon, I have made observation that the Justice of the Nation will be stopped, and that by his ambition he may be on the same foot still, to the ruin of the Nation, I would not proceed to the Tryal of the other Lords till this be over.

Sir William Pulteney.] Till this Pardon be judged, you can have no fruit of the Tryal of the five Lords, &c. If they get Pardons, all your Proceedings are to no purpose; though there is some difference between Pardons, impending Impeachments, and not impending. If the King can pardon, &c. there is an end of all your lives and liberties, till you settle that.

Sir William Coventry.] I differ, &c. because the safety of the Nation depends upon a good correspondence between the two Houses. I am afraid, if this dispute is inextricable, we shall have all the disadvantage in the world abroad, who do not see the matter so plain as we do, and so will lay the blame on us. The power in Judicature is always in the Lords, and in Bills we have an equal power with the Lords; but even in that, time and
place

place are in the Lords nomination. If in a thing wherein we are co-ordinate with the Lords, they have that power, it will be dangerous to pass this Vote, &c. Gentlemen would have this matter of the Bishops clear—Thrust the needle through, and the thread will follow; you will have it in all. Divers Bishops have said, and do say, “That if the Pardon do determine *Danby*’s life and death, they will withdraw.” If the Lords determine not that point, I am not sure that *Danby* has not a second post to pass, to pretend his innocence. What is the prudential Reason of *Danby*’s first expectation?—The five Lords have been seven or eight months imprisoned, and we assert the *Habeas Corpus*, &c. “That the subject shall not be without Tryal.” Shall we assume that to ourselves, and stand in that gap which the King has no power to do? Will the Proceeding against the five Lords make *Danby*’s Pardon better or worse, when it comes to be judged? But have not the five Lords Pardons? some may say. But that thing would be so odious, that it will bear down *Danby*’s Pardon, and twenty more on the back of it, so that the thing weighs down on that side of the argument. If the Bishops shall not withdraw, then it will follow, that the Bishops are partial to *Danby*, and the weight and odium will lie on the Bishops. Whoever wishes the Bishops well, would have them do neither. This will plain the way for *Danby*’s Tryal, &c. If we do not agree with the Lords, we know not how the Lords will insist upon the constituent power of their House; so that if you would secure your passage to all the rest, instruct your Committee to agree to the Tryal of the five Lords first.

Lord *Cavendish*.] I agree with *Coventry*, “That the Nation expects Justice against the five Lords,” and against Lord *Danby* also: (By the way, I think him as great a Criminal.) We are not to consider what the Nation expects, but what the Constitution of the Government is. Why was this Committee appointed? The five Lords Tryals may be long, and I know not what there may be of Prorogation. I move, “That you will

not agree to the Tryal of the five Lords till the validity of the Pardon be decided."

Mr *Bennet*.] The meaning of what is done in the Lords House is to cozen and cheat us of the Rights of our House, and in this it is more than the Tryal of twenty Lords. They will put the Pardon by, till the five Lords are tryed, and so they shall never be impeached, &c. My meaning is to impeach any Lord that shall play the rogue with us; you must supply the King, when you have Lords picked out, fit to be hanged for the ill they have done—Your fault is, that you did not proceed upon that Lord's stamped Pardon by creation. When the Lords feel the Commons of *England*, then they will be honest.

Mr *Vaughan*.] The Question is, "Whether all crimes shall be legitimated and pardoned?" Which will be so, if this Pardon stand good. Some things are Laws, and as obligatory as Statute Law. For instance, the Powers of Parliament are Laws, but the effect of those Laws is Right of Impeachment, and that is your Right, and if this Pardon stand betwixt you and home, Law and all is gone. This is equal to any thing whatsoever; if there be no punishment to these crimes, that tears you up root and branch, and farewell all!

Sir *Joseph Williamson*.] I speak to Order. Some of these points are not now in question before you. If you go upon the Pardon, or the priority of the Tryal of the Lords, that is not properly the Question. The matter plainly before you is, "That the Bishops ought not to have a Vote in this Pardon." The Lords say, "They will sit on *Thursday* to try the five Lords;" and the Bishops have prayed leave of the Lords not to be present there—My Motion is, That you will insist upon your own assertion, "That the Bishops ought not to be present, &c." And it must be cleared before you can proceed to the Tryal of any of the Lords. The Question is no circumstantial Question, but a fundamental Right of Judicature, the fourth, fifth, or sixth part of the whole Judges. The Question is, Who judges? Till that be decided, the
Tryal

Tryal will be nothing; for all may be void by error of Proceeding, of which there have been several Precedents. By that leave that is asked by the Lords Spiritual to withdraw, it implies, if not amounts to a proof, that the Spiritual Lords may sit if they please. Get this matter clear, and the other will follow; but I am far from doing any thing whereby you may lose your Right, by implication; it is affirming the point against you for ever hereafter. In fundamental points who shall be Judges? —Contrary to that, the point is settled against you; therefore I would give instructions to your Committee, to insist upon your last Vote, “That the Bishops ought not to sit upon the Pardon, &c.” and to desire the Lords minds in that.

Sir *Edmund Jennings*.] By the Arguments I have heard, it may be as well said, that the other Lords shall not come to Tryal, as *Danby*, &c. and that *Danby* shall be a sacrifice of expiation for the rest. It is said, “That the Bishops have no right to sit.” And who shall be the Judges of that? If *Coleman* himself were now alive, he could not more promote the designs of Popery than this discourse I have heard. I move, “That you would let the Lords know, that this House will proceed to manage the Charge against the five Lords, the day appointed.”

Mr *Bennet*.] He speaks of “making Lord *Danby* a sacrifice, &c.” Nobody said that. The Question is now, “Whether Pardons for crimes shall take away all Impeachments.”

Sir *Robert Carr*.] The words “sacrificing Lord *Danby*” are a little too hard. If the Articles be true against him, and the Pardon not good, his pleading his Pardon is a confession of the Charge. If he is condemned for confessing his Charge, he is not made “a sacrifice to save others.” The Question is, “Whether you have had satisfaction from the Lords, &c.” Now the Lords tell you, “That, as to the Tryal of the five Lords, the Bishops are content to withdraw,” and your Committee was to adjust the Right of the thing. And whereas it
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is said, "it is easier to get the point of the Bishops not judging the Pardon, after the five Lords are tryed, than before," now you see plainly, that the Lords insist upon their old Vote of the Right of the Lords Spiritual to sit till Judgment be given; so that upon your Vote the Lords say nothing, and the Bishops insist upon it. I think this is a new Judicature, to take Spiritual Lords to judge in capital causes and crimes. The Lords themselves settled the point, so that this should be the last thing to be adjusted, and they have made it the first. Those without doors think *Danby* as deep in the Plot as any of the five Lords. But what cannot be pardoned if these crimes pass? How appears it, but that the five Lords have Pardons? And then neither you nor posterity can be safe. If you settle not the point now, I believe you will scarce have time to do it a second time.

[*Sir Francis Winnington.*] I desire to answer some objections. It may be, some things are not fit to be expressed, but I will speak plain. If we consider what the Lords have done, as to the matter of the Bishops, there are two great things before us. Lord *Danby*, the last Parliament, desired time to answer. He renders himself, and pleads his Pardon. You would then know, whether he would stand to it; and he adhered to it. When we declared, that we were ready to try the five Lords, the last Parliament, *Jennings* says, "*Danby* is to be a sacrifice." I do believe *Danby* one of the Plot; to separate him from the Plot, I cannot. He took his advantage to rise, by his interest with the Papists, and hath stifled the Evidence of the Plot. He hath pleaded his Pardon, in bar of his Charge, and confesses all the Charge to be true. Now the Question is, "Whether you will do any business, if such a thing hang over your heads, as a Pardon in bar to an Impeachment of the Commons of *England*?" Now, as for the priority in proceeding against him, the Court always asks the Prosecutor, "Which Indictment are you ready with?" Who knows the Evidence best to assign a time. It appears, that to one Impeachment a Pardon is pleaded in bar. You have voted that it is not good.

good. If the Lords do think it good, to what purpose should we impeach any man else? So that this is a bigger point than the Tryal of *Danby*: Here will be no Impeachment for ever hereafter; it fell out first, how the Bishops were concerned. It looks like a nice distinction, as if the Popish Lords should be found not guilty, if *Danby's* Pardon be good. Then, as to the Tryals of the five Lords, there is a day appointed, and the Bishops say, "They will withdraw at their Tryals," and, to be sure, *Danby* is not one of them. They name the five Lords. Your Committee answered, "That this is an Answer to part, &c. but not to the whole." And had they put *Danby's* Tryal *sine die*, they said, "they had no Order to answer that." So that *Danby's* Tryal is postponed. It is to no purpose to proceed to any Impeachment, till this preliminary matter be removed, that stops all things for the future. After all Proceedings are over, he will plead his Pardon in bar. But, says a Gentleman, "If the five Lords have Pardons, it is the worse for *Danby*." Can we believe, that Pardons will not be granted, when we see it has been granted? It is to no purpose to spend out time and estates, when a Pardon be thrown in your teeth, and there is an end. "It is to no purpose to try the five Lords" (the people will say) "till we have asserted their liberties." And I believe we shall have Logic enough to make the people understand us that sent us. I propose, that you will give your Committee Instructions, "That you have had an Answer in part, as to the Lords Spiritual trying the five Lords, but you find no Answer to that of Lord *Danby*." The great matter, which concerns the Government, is the Pardon of *Danby*. I desire that the Pardon may be cleared, that we may have satisfaction in that point. It may be, the Bishops have as much kindness for the Popish Lords, as for *Danby*, and *e contra*; for they do not (it seems) stand much to their Votes. Let us stand upon the Pardon, and then I hope the Lords will do you Right as to the five Lords.

Sir *Thomas Lee*.] The Bishops will withdraw, with Protestation to their Right, as they did in the case of

of Lord *Strafford*. I am sure, the Pardon is illegal, or ought to be so, and I am sure *England* is undone, that day this is a good Pardon. But, says a Gentleman, "there may be Pardons granted to the five Lords, betwixt Judgment and Execution;" but the Lords Spiritual tell you, they will go away. How shall we satisfy Gentlemen in the country that sent us hither? I agree, that, if the Government had depended, this Plot must have been, else you could not have asserted this—*Oates* and *Bedlow* die, and there is an end of your Prosecution. It is of the most dangerous consequence in the world that this Pardon stand good. If *Danby* be not the Creator of the Plot, but the Supporter, let us be constant in our opinion.

Mr *Swynfin*.] I take not what is moved to be the most convenient way with the Lords. If you make that your ground to insist upon, consider how this communication of the Lords has been with you. The Lords say, "They have appointed such a day for the Tryal of *Danby* and the other Lords." A day after, you appoint a Committee to adjust the manner, &c. You considered then the Bishops presence, &c. and the Lords Vote, "That they have a Right to stay in Court untill sentence of Guilty or Not guilty, &c." Then the Lords appoint the five Lords to be tryed first, and settle no point as to *Danby*. But to the Tryal of the five Lords, they tell you that the Bishops have asked leave to withdraw; they will not be present, I would say, "That we have had satisfaction as to the Bishops, in the Tryal of the five Lords, but not as to *Danby*."

Mr *Paul Foley*.] The Bishops have voted, as to this Tryal of the five Lords on *Thursday* next. I doubt, the Lords in Judicature will stand stiffly upon their points, which they always do. I think you have not yet made an Order for the Committee to insist upon your former Vote, as to the Bishops presence at the Tryal of the Pardon.

Sir *Henry Capel*.] I think it not the Question, "Whether the five Lords be tryed first," but "Whether the validity of the Pardon, to prevent the ill consequences of
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it for the time to come." Parliaments sit upon two great things, giving Money, and questioning great men for offences, &c. and you had better part with your power of giving Money, than that. You will be of no use at all, if your power be taken away of questioning exorbitances in the Government. This is the great point, and I move it for Instructions to the Committee, "That, till this point be settled, you cannot proceed to any other matter."

Mr *Powle*.] I cannot agree, that this Answer of the Lords is satisfactory to your propositions. The Lords have asserted their Right to be present, and then tell us, "That the Bishops have asked leave to withdraw;" both voluntary things; and the Lords may tell you, "That their leave to withdraw is not accepted," and so they may sit; and if the Spiritual Lords do not ask it, the Temporal Lords will not give it; and so you are where you were before. At Lord *Strafford's* Tryal, the Spiritual Lords sent you word, that they would withdraw; now, they will ask leave to withdraw. The Lords have not dealt with you according to intercourse of Parliament. They tell you, "They will not proceed to Tryal, &c. till all matters are adjusted," and now they set down a peremptory day for Tryal of the five Lords. I move, "That the Lords may be desired not to appoint a day, till all matters are adjusted." If the Lords will force a dispute upon us, and cram it down upon us, they may, but let us not give them occasion. I would only desire their Vote to be explained, as to the Lords Spiritual, &c. and that they would not proceed to Tryal, till matters are adjusted.

Mr *Hampden*.] For Instructions to the Committee, I would have satisfaction, as to the Bishops, &c. before we proceed upon *Danby's* Tryal. You were some time before you had the honour done you to have a Committee of Lords and Commons for adjusting matters, &c. The matter of the Lord Steward is well adjusted. The next thing is, that of the Bishops being present, which is more in relation to Lord *Danby's* Pardon than any thing else.
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The Lords said, "The Bishops should not be present at the Judgment of Death;" but when the Committee urged that of their presence in the Judgment of the Pardon, the Lords say, "They had no power to debate that." Then you proceeded to vote, "That no Bishops ought to be present at the Tryal of the Pardon," and the Lords go quite out of the way of that, and tell you, "That the five Lords are to be tried on *Thursday*, and that the Bishops shall ask leave to withdraw." The Lords distinguish the Cases, and naturally have brought you to this, and had appointed the time for *Danby*, &c. before. This is not expressed, that the Tryal of *Danby* is postponed, but plainly implied. I respect not *Danby* in the matter, &c. but the business of the Pardon. If it be so heavy a thing that nobody can bear it, yet if the Pardon be good, what can the Nation bear? This matter of the Lords Spiritual, &c. is less understood, because it is less explained. What if there should come a Prorogation, how will you dispute the Pardon then, and Mr *Bertie's* Book, &c.? I can see no hurt in pressing the Lords to go upon the Pardon first. I would therefore plainly know the Bishops mind as to this of Lord *Danby's* Pardon, &c. and then proceed to that of their withdrawing at the Tryal of the other Lords.

Mr *Garroway*.] By the last proposition, there is no danger of meddling with the Lords Judicature. The Lords cannot be angry with it. All *England* is too heavy a weight for them to bear.

Sir *Nicholas Carew*.] The five Lords would destroy the Nation one way by Popery, and Lord *Danby* another, by a standing Army, and Pensions to Parliament-men, and would deliver us up to *France* that way. He that takes away our Money, takes all, and he is as culpable as the five Lords. If you decide not this matter of the Pardon first, you may be sent home before you decide the other.

Mr *Sacheverell*.] I would not give occasion of difference betwixt the two Houses, but I would preserve our Right. I like what is proposed. I would know whether

ther the Lords will proceed upon the Pardon, and would have the Bishops explain themselves. You have demanded Right against *Danby*, and the Lords cannot give Judgment, till you demand it, and so you cannot proceed upon the other Lords, till then.

Resolved, That it be given as an Instruction to the Committee, To insist upon the former Vote of this House, That the Lords Spiritual ought not to have any Vote in any Proceedings against the Lords in the *Tower*; and when that matter shall be settled, and the Method of Proceedings adjusted, this House shall then be ready to proceed upon the Tryal of the Pardon of the Earl of *Danby*, against whom this House hath already demanded Judgment; and afterwards, to the Tryal of the other five Lords in the *Tower*.
[*May 19*, omitted.]

Friday, May 20.

Mr *Harbord* reports, from the Committee of Enquiry into the Miscarriages of the Navy, some Miscarriages of Sir *Anthony Deane*, and Mr *Pepys*, relating to Piracy, &c. *

Colonel *Scott* informed the Committee, "That having opportunity of acquaintance with several great men belonging to the Navy, by their death he is discharged from obligation of privacy, things being now settling in *England*. He said, "That Monsieur *Pelisy*, Treasurer General of the *French* King's Navy, showed him several Draughts of Models of Ships sent him from *England*; the Government of the Admiralty; the Number of Ships; the Strength and Condition of the Navy; Methods of Sea-fights, collected from the best Sea-commanders; the Satisfaction of the Sea-men, those bold fools, who for Money will do any thing; Maps of the Sands and Soundings of *Medway* and the *Kent* Shore, the Isle of *Wight*; Remarks upon the present Condition of *Plymouth*, and Plans of *Sheerness* and *Tilbury*. He who brought the Yatches for the Canal of *Versailles*, was Captain *Deane*, who could give a farther account. All these Papers were signed by *Pepys*. Monsieur *Pelisy* had orders to use Capt. *Deane* with great kindness. He is the same per-

* This was for fitting out a sloop called the *Hunter*, out of his Majesty's Stores, in the year 1673, making her free of the *French* Ports, and procuring her a *French* Commission, in order to cruize on the *Dutch*; which, being contrary to Treaties, might have occasion-

ed a War between the two Nations: She also made prize of a free ship of *England*, called the *Catherine* of *London*, which, though proved to be *English* before his Majesty in Council, the Check-master of *Portsmouth* was sent to *Paris* to get condemned. *Ralph*.

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son, who is now called Sir *Anthony Deane*. He said, *Pepys* would not part with these things but for so good an end as 40,000*l*. (But there is a mystery in this, more than I dare speak of.) But said *Scott*, "I hope these rogues that have betrayed their country are not of our Religion, the Reformed." *Pelisy* answered, "They are of the Devil's Religion; let us drink off our wine." Because there are endeavours to take off *Scott's* Testimony, he desired two that are at the door might be examined.

The Evidence, at the Bar, said, That in 1674, he had a promise to command the *Jersey* frigate, but Esquire *Pepys* hindered him of it. The only reason was, "That the place was too good for him," and he told him, the Duke of *York* said it was; it was a command for the best Knight in *England*. The command was never settled upon any one. In May 1679, he saw Colonel *Scott* in *London*, and often heard him say, "That *Pepys* was a great betrayer of his country, and in time he would make it appear; and that *Pepys* was one of the Arch-Traytors of the Kingdom." And he heard *Pepys* commend the Catholics for their constancy in Religion.

Mr *Harbord*.] There have been reflections upon *Pepys* formerly as to his Religion*; and by collateral proof, I shall much convince the House, that he is not of our Religion. I am sorry I must say it of a man I have lived well withal.

Then was produced another Evidence.

John James, at the Bar, owned his hand, and the contents of his Information, given in writing, to be true, viz.

John James, of *Glentworth*, in the County of *Lincoln*, said, "That, when he served Mr *Pepys* as a Butler, there was one *Morello*, who used to say Mass at the Queen's Chapel, *St James's*, *Somerset-House*, and *Whitehall*, and usually went into the room with the Queen. He was frequently shut up with *Pepys* in his closet, singing of Psalms. He used to carry a pistol and a dagger, and went often into *St James's Park*, and went to *Pepys's* house at *Chelsea*. He was a learned man, and would dispute with *Pepys* in Philosophy. He would be often up till three of the clock, singing Psalms, and *Pepys* and *Morello* were shut up together. *Pepys* would commend the Catholics for their constancy in Religion—He hath heard *Morello* say, he had studied at *Rome*. He had Beads and Pictures, and a private door to his room; and when a Proclamation was out for Papists to go out of Town, *Pepys* helped him away with his Papers and Books. He has heard *Pepys* say, "That there was not an Employment in the

Navy for any man, unless in the Duke's Books, and directions from the Duke."

Sir *John Hotbam*.] I spoke with Mr *Oates* in the Lobby, who says, "He knows this *Morello*, and that he was a *Jesuit*, and with great importunity procured himself to have the care of the *English* business."

Mr *Garroway*.] This is one of the branches of the Plot. We have a Land-Plot; this is a Sea-Plot. Possess yourselves of it, by reading the Report at the Table. See the *Journal*.

Serjeant *Maynard*.] I think this comes near the charge of the Lords in the *Tower*. I would have the Papers put into the Speaker's custody.

Mr Secretary *Coventry*.] It is reasonable that *Pepys* should have Copies of the Papers.

Serjeant *Maynard*.] I would know whether ever Copies of Informations can be given to a man accused or indicted in any Court. You must first head them, and he may have Copies of the Articles in due time, when you think fit. Entries must be made first in the *Journal*, and then you may see what Defence can be made for giving the *French King* such information as you have heard.

Mr *Pepys* makes his Defence.] It is a mighty misfortune that I am charged with so many accumulative ills at once, and all by surprize. I will not speak by way of complaint of the Proceeding, but bemoaning myself in this Charge upon me of breach of my Duty to my King, my Country, and the Government; in all which respects if I am guilty, and what is charged be true, I deserve to be thought the greatest Criminal in the world. But pray allow me to say this, that I have not failed in any attendance upon the Committee, &c. and I never heard of any accusation from Colonel *Scott* there, nor from *James*. All this accusation is as fresh to my hearing, as it is totally foreign to all the actions of my life. It is not reasonable that I should be acquitted of this Charge by any professions of my own, but I submit to any method of purging myself. As a Member, I know not whose misfortune it may be to fall under reproaches, and I expect no more than as any Member would by himself, as an *Englishman*, and a Member. But I will not let you go away without making some Defence for myself. If I fail in repeating the Charge, it will be for want of memory, and not design. I am accused, "That I was a man concerned in the Ship *Hunter*, &c." (See

the printed Journal.) I appeal to the Committee, whether any thing passed there, &c. There was one Query, "Whereas the House was informed that there were several hearings about the Ship *Hunter* at the Admiralty, &c." I was demanded what passed there of all that matter. As to what related to the *Hunter* before the Lords of the Admiralty, and related to myself, I answer, it never was at the Admiralty, nor was I directly nor indirectly interested in any thing of it. I knew neither Ship, nor share in her, nor the cause there depending. If I did, never trust me more. I beg I may be referred to my Books. Possibly, in the *Dutch War*, applications might be made to the Admiralty for Letters of Reprisal, and such a Commission might be granted. If upon search there appears to be such a Commission, I will take upon myself the blame of it, so cautious I was of it. As for the other part of the Information, the Informer will not say he ever knew me; for the Captain is a stranger, &c. and till he seized the Ship, I knew nothing of it. It is not improbable, that when this Cause was at the Council Board, the Case was stated in writing, and the foulest practice that was ever done by *Englishmen*. Supposing this Case of the Ship *Catherine* as it is stated, it is worthy your enquiry, as the greatest piece of cheat that ever was, and so filthy in all circumstances of those that complain, that I wish you saw all the Proceedings. If any man will say, I know a word of the Ship *Hunter*, &c. to be true, I will give it under my hand, that I am the greatest villain in Nature. As for the charge of Colonel *Scott*, (Lord! Sir,) it is a crime upon me of that weight, a man of my place, and in a time so dangerous, that I am willing to contribute to my own prosecution to clear myself. This Gentleman I know not, nor ever saw; I know neither his name nor quality. Where is his abode or dependencies? he is to me utterly a stranger. This House made not the Committee a Secret Committee. I hoped that before this had been reported to the House, I might have been thought worthy to have heard something of it; but I was not privy to any part of this; but let that hardship go. I overheard a Gentleman say, "Is not this that Colonel *Scott* that gave Information the last Parliament?" I know it not. The story is this. There was an Information about the breaking out of the Plot, from an Officer at *Gravesend*, that a stranger came thither on *Saturday* night, and walked about all *Sunday*, and would have hired a boat to carry him away any where. He set up his horse without the town (I will do nothing with malignity.) This man made his escape before he could be seized; he was pursued to *Deal* and to *Dover*. This man could not get passage directly, but goes to *Sandwich*, and so to *Rye*, under the name of *Godfrey*. The House commanded

commanded me to seek after him. The Lord Mayor found out his lodgings, and found Papers of ill importance, which were delivered to the Speaker, and are now in the Secret Committee's hand. I would not have troubled you with this story without some reflection upon it. If the same be true of this Gentleman (*Scott*) you will find, that these Papers, found at his lodgings, were just such Papers as he accuses me of. What construction you will make of it, I will leave to you. Now whether *Scott* does this to quit scores with me, I know not; but this I am sure of, for writing into *France*, to the Ambassador, or any *French* Minister, or for communicating any of these weighty secrets, it is out of my province, for the fashions of ships, &c. are entirely out of my watch. In these Papers you will find all Representations, as reported from the Navy Officers to the House, word for word, and the Ordnance, transcribed. He tells you, "That the Papers in *France*, &c. were signed by me." 'Tis *Scott's* "Yea, by report;" 'tis my "No, before God Almighty." I have ever industriously avoided being within the smell of the *French* Ambassador. As for this *James*, this is an Information of a servant against his master, and a Member of the House, and that Member never called to the Committee to hear it. For the thing itself; this man was my Butler, recommended to me by Sir *R. Mason*; he had been servant to Sir *William Coventry*, and in his way was a very ingenious servant; but it was his ill luck to fall into an amour with my house-keeper, and, as fortune was, *Morello* overheard their intrigues, and caught them together at an unreasonable time of the night. It was *Sunday*, three o'clock in the morning (the better day the better deed.) I turned him away, and he was never in my House since; but I had cause of suspicion that *James* came within my House at a window, and robbed me. As for *Morello*; my leisure will not permit me to go abroad for diversion, and I sent abroad for a man of learning, and a good Musician; a Merchant, one *Hill*, sent me over *Morello*. His qualifications are these: He is a thorough-bred Scholar, and may be the greatest Master of Music of any we have. He came to *Lisbon* a page to a great man; and my friend, *Thomas Hill*, found him out there for me. There are Members of the House, if they will, can tell you, that *Hill* is not a man of that strain. I have entertained myself harmlessly with him, singing with his Lute, till twelve o'clock, when it was time to rest. At *Lisbon* he was thought so moderate a Catholic, that he was under some suspicion. There is a Member, who knows him so well to be a harmless person, that I need say no more. Another thing was said, "That he uses to go on *Saturdays* to *Chelsea* with me." I never went with him one night to *Chelsea*. If

ever he lodged there one night, let all be taken for true that is alleged. As for staying him after the Proclamation, &c. I never stayed him; he went publickly out of town to a friend in the country. He shall attend you, when you please; and if he lives not with all the harmlessness and virtue, that a stranger can live in a strange country, never credit me more. This is as much as a Member can say in such a matter.

Sir *Anthony Deane* makes his Defence.] In the *Dutch War*, 1673, seven or eight persons were minded to set out a Privateer. I had an eighth part, which was about 400*l*. The Bills of Sale, and all things thereunto relating, you shall see when you please. Next, it is said, "That the furniture of the ship was taken out of the King's Stores." I never knew any thing of fitting the ship out but paying the Money, and the person is living that received the Money---And if they that commanded the ship have not done what they ought to do, you may punish them. I had for my eighth part 35*l*. The vessel went to sea, and took Prizes, and at *Calais*, a Prize was condemned, and the Captain (*Moone*) spent the Prize there, and returned with the ship to *Dover*, and I never saw a penny, nor had a penny of that Prize. By chance, the very individual account of the vouchers I have. The matter has been before the King and Council, and discharged there. The Captain was committed at his return, and removed himself by *Habeas Corpus*, and never showed cause why he made the Prize away. He gave it out, "That he was set on by some *English* Merchants to say that the ship was set out by the King's Stores." This is all I know, as to Captain *Moone*. It was never in my thoughts to procure a *French* Commission---The ship called the *Catherine* was manned by *Dutch*, which was the cause of the *Turkish War*---This is no free ship---This was taken by Captain *Swaine*---*Dutch* ships, not naturalized, you have confiscated. As to Colonel *Scott's* Information; I was a builder of ships at *Portsmouth*, and the King sent for me to go to the King of *France*, with two boats, for the Canal at *Versailles*, the depth of my stick, about three foot and a half. The Question was, whether they should be at the King's charge, or the *French* Ambassador's. Says the *French* Ambassador, "we will pay for it." I built them in obedience to the King's command, little thinking I should be questioned here for it. The boats were carried nine miles by land to *Versailles*. At the King of *France's* desire, I went over to see them carried to the Canal. The King went into the Vessel, and sailed with me. When I had done all, &c. the King of *France* presented me with 600 Pistoles, for my charges, and his Picture set with Diamonds, worth 200*l*. and he gave my Son a Medal of 100*l*. the Captain of the Convoy, a Chain

Chain of 100l. and the men that took the pains were rewarded accordingly. I was used well, and kindly, but could not speak one word of *French*. I was not presented to the King of *France*, but by my Son, who spoke *French*. Such was my caution. I endeavoured to improve my time whilst I stayed, by information of their whole methods of Government of their Navy, which I presented to Secretary *Williamson*, the Duke, Lord *Anglesea*, Secretary *Coventry*, and my Lord Treasurer, to show them, they had no need of learning from *England*, they had got into so excellent a method. I did present a man, &c. to give an account of all their Ports, but that man came short home, and I feared to send another. In the presence of God, I speak it, I never sent any Plan of Forts, or Soundings, &c. All things in *France* are in such order, that, for my part, I was afraid to see it. I, that have done this! And never gave any one mark or line to the *French*. I have twelve children to take care of, and I to think of a better way than that happy station I was in!—I have bewailed and lamented our station---I hope you will take it from a Gentleman. If it should be the last word I should ever speak, I never carried script nor scroll from Mr *Pepys* to Monsieur *Pelissary*. This is the truth of all I know, and nothing in the world more than I do know. A Member of this House, who was lately at *Paris*, named this Col. *Scott*, to have given all intelligence to the *French* Court; this man that did it, said it to me on *Sunday*, by accident. For these nineteen years I have faithfully served the Navy, and more regulations have been under my hand, than were ever before. This, I hope, will give satisfaction to the House.

Sir *Joseph Williamson*.] It is but due to this Gentleman to give you an account of his care, and great care. I must do him right, that he carried all his queries along with him into *France*. It is not happy, when such things as this arise in great Assemblies. *Deane* sent a man of his own trade to be farther informed of the *French* naval affairs, and he came short home, which deterred another from going. I have borrowed great lights from *Deane*. I remember one thing that *Deane* forgets. There was a time when the *French* sent the Marquis de *Signelays**, who took his way, affectedly out of his way, by *Portsmouth*. I remember, *Deane* laid a counterplot against the Marquis, to prevent any information he could get of the Navy.

* Secretary to the *French* Admiralty.

Mr *Sacheverell*.] I have heard the Report from the Committee, and the Gentlemens Defence, but I would not have the thing lightly passed over. If what is charged against them be true, they are as great crimes as the Lords in the *Tower* are charged with. If you will not go forward with this matter to-day, the Witnesses may be heard at the Bar to-morrow, and then you may hear what they can say for their justification.

Mr *Harbord*.] These Gentlemen have made long speeches in defence of themselves, and made themselves innocent. But I will call Witnesses to prove those ships, &c. fitted out of the King's Stores. It was said to *Pepys*, by one, at the Council-Table, "That he would forfeit 500*l.* if he did not prove this to be true. He will undertake to prove this of the *Hunter*;" and as for the Information given by *Pepys's* Butler, &c. the Butler had 500*l.* security for his honesty. When you had an account, the last year, of the two Navies, the *French*, and the *Dutch*—In this, *Deane* now contradicts himself. The Duke of *York* is put out of Commission of Admiral by Act of Parliament, and yet these men must be directed by the Duke, to put the Navy into Papists hands. *Pepys* is an ill man, and I will prove him so.

Sir *Francis Rolle*.] *Pepys* has been very unfortunate in his Servants; one accused to be in the Plot (*Atkins* his Secretary!) another, his best maid, found in bed with his Butler! another accused to be a *Jesuit*! very unfortunate!

Sir *William Coventry*.] This *James* was formerly my Butler. I do not love to do ill offices to one that has served me, but when he was with me, his service was not so direct, as to recommend him to a friend.

Mr *Pepys*.] All know I am unfortunate in my Servants, but I hope that is no crime to be so. I have not taken servants at hap-hazard. I have had bond for *James*, and a recommendation of *Morello*. That I am unfortunate is my misfortune. The account I gave you formerly of the *French* Fleet, I had not from foreign hands, or *French* Secretaries, but from Lord *Arlington* and *Deane*.

Mr

Mr Garroway.] I never desire to have crimes so charged, but to be proved. You have called in Witnesses, &c. Now the matter is, how you will proceed. I like not to have Felony and Treason put up. There were crimes charged against the Duke of *Lauderdale*, &c. and the Witnesses were sent away, you may remember. Either these Witnesses speak true, or false. I think that those mens Evidence is a ground of charge, and whether you will impeach them, or let the Attorney General prosecute them, you cannot leave it.

Mr Secretary *Coventry*.] It was said by a Gentleman, (*Pilkington*,) "That the Information against Colonel *Scott* was, that he might be clapped up, and starved." But it was *Conyers*, the *Jesuit*, who was searched for in the City, and *Scott's* absconding himself gave the suspicion against him. When *Scott* was seized, at the Quarter Sessions, at *Dover*, he said his name was *Johnson*. His Father's name was *John*, and he was *John's* son. He is at this time under a recognizance. You are told, "That these very Papers are in *Scott's* hand that he accuses *Deane* of." *Scott* pleaded, "That he was in *France* to survey the Prince of *Conde's* land in *Burgundy* and *Picardy*, and had a thousand pounds for his pains."

Mr *Harbord*.] Secretary *Williamson* said, "That he thought *Scott* the ablest man in *England* for a *West India* voyage, and it was pity to lose him." *Scott* has a testimonial from *De Wit*, that he commanded eight Regiments of Foot for the relief of *Flanders*. A great man in *England* told me, "That *Scott* was attempted to be corrupted to bear false witness against him, and *Scott* detested it." Though the matter is not Treason against *Pepys*, yet it is Felony, &c.

Mr *Sacheverell*.] I move that the Serjeant may take *Pepys* and *Deane* into safe custody, and they may be heard tomorrow, that they may have time to make their Defence, and you will be just to them, and yourselves too.

Mr *Harbord*.] I must remind you, that the night you committed Mr *Bertie*, Mr *Brent* was with him at the *Devil Tavern*, one that was as deep in the Treasurer's box

as any man. *Bertie* is charged with 100,000*l.* &c. and I will tell you of 200,000*l.* not put to account. The King's debts will pay themselves, if you look into these things. This will be made out against *Bertie*. If you are in earnest, take care that these persons be kept. These are not proceedings like great men, nor *Englishmen*, and I would have *Pepys* and *Deane* committed to the Tower. Let them withdraw, and you may debate it.

They withdrew.

Mr Secretary *Coventry*.] This looks proper for an Accusation, but not for Conviction. I would have you do equally. You have taken one part of the Evidence at the Bar, and left another part to your Committee. I would have all the Evidence at the Bar, and then it is equal.

Mr *Seymour*.] I speak to Method of Proceeding only; what I propose is to your Justice; you will do it to every man; especially to those who have the honour to be Members of this Body. The Parties should have had the Matter before them for some time to make Answer. But now you have another Rule to walk by. You have had a narrative of the Charge, and their Answer to it, which you thought not satisfactory, and the Gentlemen are withdrawn. It is not suitable to your Justice, not to be under Commitment, and now they ought to have their particular Charge formed and put into their hands, and their Answers must be as particular as their Charge.

Sir *Thomas Littleton*.] This is not to be understood such a custody, as that their servants may not bring them their Papers. *Withers's* Commitment formerly was by way of punishment; this is of another nature.

Sir *William Coventry*.] The Commitment of *Withers* was in the height of your zeal, soon after the King's Restoration; and if you commit into close custody, much more the King may do it; and that stopped your mouths into enquiry into close custodies the last Parliament.

Ordered, That Mr *Pepys* and Sir *Anthony Deane* be committed to the custody of the Serjeant at Arms attending this House, [and that the Matter of the Report, this Day made, be farther examined, at the Bar of the House, on *Thursday* next.] See the printed Journal.

Wednesday,

Wednesday, May 21.

Mr *Treby* reports several Letters, and Papers, relating to the Duke of *York's* being a Catholic, and *Romish* correspondences.

The Bill for disabling the Duke of *York* to inherit the Imperial Crown of this Realm, was read the second time.

Sir *Thomas Clarges*.] I desire that there may be no farther proceeding in this Bill. If I did think that the Person of the King, Laws, or Religion were in danger without this Bill, I would give my consent to it with as great alacrity as any body; but this Bill seems to me to hazard the King's life. Religion is of great moment to provide for hereafter, and to secure it by all means lawful and just; but I am taught to *do no Evil, that Good may come of it*, and through the consequences of the Bill, I would not disgrace the Protestant Religion. Justly the Papist's is called a bloody Religion; let us not so far take their arguments, that, because they are Idolaters, we may depose lawful Successors. I have (thank God!) no place at Court, nor care for any. I desire only to live with comfort in what I have; and for Religion, to follow nothing but what the Primitive Christians practised. When ever did Christians under *Arian* Emperors spoil them of Succession, &c. ? *Julian* the Apostate was most violent against Christians; though they suffered their persecutions with patience, yet I well know, that, in his conquest of *Persia*, they would not go against him. They would not do ill, that good might come of it. A certain unjust thing is not to be done for any just. No human policy can give you an absolute security of Religion. Are we sure that the Lords will pass this Bill ? The King never will. If he does, when this Law is passed, we must have a standing Army to maintain it. Here is a Prince exasperated to the highest degree, and against his Brother too, and you must have an Army to maintain this Act, and then what security can you have for your Laws, that you shall be governed by them ? The greatness of power by an Army was lately a complaint in Parliament, and if there be confusions and dislike of the Govern-

Government, the King goes after the Duke, and all is in confusion. By this Bill, if the Prince of *Orange* should but have any communication with the Duke, this Bill excludes all the Posterity. It is no light thing to consider the Lords in passing this Bill. If they pass it not, there will be Petitions from the City, and Remonstrances; and when all is in confusion, you must have resort to an humble Petition and Advice, as in *Cromwell's* time, to have somebody to govern the Nation. This is a new Parliament, and many brave Gentlemen in it of estates, loyalty, and integrity, fathers and sons who have suffered for their loyalty. Consider what condition you are in; you have passed a Law to-day against Popery, and another, that all Papists shall be convicted by name, and if twenty be together, they may be knocked on the head; that no Papist shall sit in either House of Parliament; the *Habeas Corpus* Bill; Bill against illegal exactions; and will you, by this Bill of incapacitating the Duke, &c. lose all these good Bills, that could never yet be arrived at? What fruit can the Nation have of this, by an exasperation of the King? Will not this Bill be as timely three or four months hence, if it was useful? Suppose the Duke have a son that is a Protestant, and the Duke lives to see his son of some age, who can oppose the Duke his father to come and live with him? We have some divisions amongst us, and discontented people will take any thing by the hand—Has not the King come very far towards us? Such condescensions as any would have been glad of six months ago. I will undertake by them to show you greater security than in this Bill. The father of the Succession has been lately taken away (God knows!) and this King's danger will be greater by this Bill. This Bill will cause animosities so stupendous and inconvenient—I cannot recollect much more I had to say, but I move only, not to commit the Bill.

Very little was said in answer to this, but a great cry, “The Bill, the Bill.”

[The Bill was ordered to be committed to a Committee of the whole House, on a Division, 207 to 128 *.]

* Before this Bill came to a third reading, the Parliament was prorogued.

Thursday,

Thursday, May 22.

[A Message from the Lords to acquaint the House, That their Lordships had appointed *Tuesday* next, *May 27*, for the Tryal of the five Lords, &c.]

Mr *Harbord* makes a farther Report concerning *Deane* and *Pepys*, (*which see at large in the Journal.*)

Mr *Harbord*.] This ship was sent to sea with *Deane's* consent, to set upon the *Hollanders*, after the Peace was concluded, and the first thing they do is to take an *Englishman*, &c.

Then he produced the Inventory for Stores for the *Hunter*, &c. signed by the Clerk of the Stores. Captain *Moone*, at the Bar, acknowledged a Letter which he received from *Deane* at *Dover*, which was read to the House.

[Ordered, That Sir *Anthony Deane*, and Mr *Samuel Pepys*, be sent to the Prison of the *Tower*, and that Mr Attorney General be directed forthwith to prosecute them for the Crimes objected against them *.]

Friday, May 23.

Mr *Hampden* reports, out of the Lords Journal, how the Impeachments flooded the last Parliament, and all things relating thereunto from *March 11*, 1678, to *May 16*, 1679.

Sir *Francis Drake*.] It is generally reported, "That the last Parliament had sold the Nation;" as if they 'came up to give Money to betray their public trust. I am of opinion that such were amongst us then. I would have the Committee report what they are informed of it, though *Bertie's* Book is not yet known.

Sir *John Holman*.] If my name be there, I would have you know it.

Sir *Nicholas Carew*.] Though nothing can be got out of Mr *Bertie*, yet the Secret Committee knows something. I know not how long we shall last; and I would have the World know it.

* How far the Charge against them was true or false, is no where cleared up; for though *Deane* and *Pepys* were immediately committed to the *Tower* by Order of the House, and the Attorney General was enjoined to prosecute them,

it does not appear that ever any such prosecution took place: So that if innocent, they suffered too much, if guilty, too little, and Justice was equally offended either way. *Ralph.*

Serjeant

Serjeant *Rigby*.] I was of the last Parliament, and I would know the names of those who have done so basely.

Mr *Sacheverell*.] I would give Gentlemen some little light, before I make the Report, &c. how the matter stands. The Committee will be able to produce several persons, who can prove Moneys paid, &c. But you have a Member within your walls, (if you will go to it in good earnest) that can discover to whom Money and Pensions were paid; and if he will not, he is not fit to be here. It is Sir *Stephen Fox*, who, though he has delivered up the private Books, yet has several Books that can discover it; his Ledger, and other Books of Pensions, &c. before *Bertie* came in. I move you, that, if he will not give you an account, you will deal with him accordingly.

The House being informed of several sums of Money paid to some of the Members of the last Parliament by Sir *Stephen Fox*, and that he has Books of Accounts to evidence the same;

Ordered, That Sir *Stephen Fox* be immediately sent for to attend the House, and do bring with him all the Books, and Papers of Accounts, of any Money that he has paid to such Members, and others, for keeping public tables.

Sir *Stephen Fox*.] I came but just now from my lodgings, by water, and I was told of the Order, &c.

The Order was read to him. He proceeded,

I know not whether I can do what you command me in any time. I have paid much Money for "Secret Service," but for these four years I have paid none. I have paid it as "the King's Bounty," and under such other titles, but not as "Members of Parliament." It is absolutely necessary that I have some time to peruse my Books.

Mr *Williams*.] Your design is to have his Books, and you to judge whether the Pensions, &c. given, be "the King's Bounty," or to what other purpose. This matter has been depending a month; it has been examined already, and no doubt but *Fox* has the thing ready for you.

Mr *Garroway*.] I would know, whether *Fox* kept the Book of Secret Service apart, or mixed with other Accounts. Formerly, when the Committee of Accounts was, Sir

Philip

Philip Warwick brought in 60,000*l.* Pensions, and in a little Book “for Secret Service,” in one folio, there were fifty *Items* of Money “for Secret Service,” for Members of the House.

Sir Stephen Fox.] If your design be to know the Money “for Secret Service,” I desire I may have time to ask leave, &c. When I was discharged, my Books were commanded from me.

Mr Whorwood.] I think it not fit that any person should ask leave to do his King and Country service. I hope he will better consider of it. I hope this Gentleman will be so ordered, that he must bring his Books hither—He has no dependence more upon that unfortunate person now under the obloquy of the Nation.

Mr Boscawen.] *Fox* has acknowledged that he has such Books. You have been told by a learned Gentleman (*Maynard*) “of corrupting the Fountain of Justice and Law.” If this place has been corrupted, it is God’s great mercy that such a House had not delivered up the Nation to arbitrary Government. I will not stick to move you, if *Fox* will not do it, for a Law to confiscate his Estate, and to take off his head.

Sir Stephen Fox.] This is an entire surprize to me. I have made a Book “of Secret Service,” but I have delivered up my Books; but I have other Books. I was a great Accountant, and this “of Secret Service” is mixed with other Accounts. What is meant is, time to ask leave to have those Books I have delivered. It will give no satisfaction to the House to bring my Ledgers. They are great vast Books. I desire that I may have time to ask leave to recover that Book “of Secret Service” I extracted out of the Books.

Sir Eliab Harvey.] I would know, whether Accounts “of Secret Service” are entered into the Ledgers.

Sir Stephen Fox.] All that ever I paid in my life are in that Book; but they are so intermixed, that you will have no satisfaction. What I desire, is leave, &c. This, “of Secret Service,” is of divers natures, and the Ledger is of several millions. That for Secret Service is mingled. When
I deli-

I delivered up my Books, that particularly "of Secret Service" I delivered up likewise. I kept no transcript of the Account "for Secret Service," but it is within that Ledger.

Sir Francis Winnington.] *Fox* tells you, that he has his Ledgers ready, but as for the Book "of Secret Service," he desires to ask leave for it. If the Ledger Book be brought with the Book "of Secret Service," you may compare them. I understand that *Fox* is a well-bred Gentleman; and what he does must be modestly and softly. I know that 3 *Char.* I. the Parliament sent to the Office of the Privy Seal for their Dockets. This we have authority to do, and I would order him to bring his Ledgers.

Mr Garroway.] I love not hardships, to put streights upon any Gentleman. I know the fair demeanor of *Fox*, and what hardships he has been under. He has confessed the Book, and I see not how he can ask leave; he is so great a Master of Accounts, that he keeps transcripts. If he denies you the Books, you must command his Papers to be seized, and brought hither.

Sir Stephen Fox.] I would be understood, that I would not have refused you the Ledgers; but the thing coming hastily upon me, I desired leave, &c. The Ledgers will not satisfy you, but if I can obtain leave, I will bring the Book, or extract of what is "for Secret Service" out of the Ledger. It was my own care to keep an exact Account, to satisfy the Master I serve. This was not an employment I desired. I never spoke, nor was adviser, but I was directly to issue out Money, as I was ordered. I hope to obtain leave to bring that Book; but I would be understood that I have not that Book.

Sir Eliab Harvey.] I would know, whether every man's name is put into the Ledger, to whom Money has been given "for Secret Service?" If not, the Ledger Book will do you no good.

Sir Robert Clayton.] Without doubt, *Fox* is regular in his Accounts, and you may find them under proper heads, and you may see the same things in his Ledger with as much ease as if you had his Book "of Secret Service."

Mr

Mr *Seymour*.] *Fox* tells you, "that he had a disposition of Money "for Secret Service," and all is in his Ledger, and that he has made out a particular Book for Account of the Money "for Secret Service." I would know, whether out of his Ledger he can extract it?

Mr *Love*.] That Book, called the Ledger, will do your work abundantly. It is but a Cash-Book, "paid to *John* and *Thomas*," and so we post it into the Ledger Book; so that by looking into the alphabet you may know in half an hour.

Mr *Williams*.] Entries of Moneys may be under disguised names, and so you are never the nearer. As for *Fox*, he fences with you; he is no Exchequer Officer, here are no footsteps of his payments. This is a cunning insinuation. Let him answer plainly, if the Book he showed the King, be exactly what is entered into the Ledger Book?

Sir *Stephen Fox*.] Nothing will satisfy the House but the Book "of Secret Service;" the other is so mixed. I will endeavour to bring that Book.

Mr *Garroway*.] *Fox* has given you a shifting Answer, and no ways satisfactory. I would have his Answer plainly, whether those in the Ledger be the same sums and circumstances?

Sir *Nicholas Carew*.] Ask *Fox* no more questions, but send some Gentlemen to seize all his Books and Papers that he has, and to bring them hither.

Mr *Williams*.] If Gentlemen will suppose this Book to be with the rest, you may find it; but if in a dark and close hand, you will not find it. Ask him whether this Book is in his hand, and let him declare it sincerely.

Sir *Stephen Fox*.] This Book lies not among my other Books, but I delivered it up to Lord *Danby*, but I will endeavour to bring this Book. It lies in the King's Closet, and I will obtain it, if I can; if not, I will bring you the best copy I can.

Being asked about the Acquittances, he answered,] I certainly always took Acquittances, and they are with my Books and Papers at home.

Mr

Mr *Garroway*.] Ask him, and let him answer positively. They have Books wherein men subscribe the Receipts with their names. I have been conversant in Accounts, and know that such things are done.

Sir *Stephen Fox*.] I was not so careful as to enter the Receipts into Books, but in loose Papers. This business went on by degrees, 2 or 3000*l. per annum*, and I am not an Accountant by law. But could I have foreseen so long an employment, I would have been more exact; but I have them in loose Papers.

Sir *John Hotkam*.] Remember the place you are to go to (*Whitehall*) and make no Order to seize, nor search for Books, nor Papers, but take such as he will deliver to you. He knows your mind, and what is for your purpose; and if he will not deliver them, you may take an Order with him.

Mr *Williams*.] *Whitehall* may be a sanctuary for these concealments, but no place is sacred against your search. I would not have that pass for doctrine.

Sir *John Hotkam*.] If it be your Order to search, &c. I will go as far in obeying it, as any man.

Mr *Swynfin*.] I would not use your power, till you have occasion for it. Spend no farther time, but let this Gentleman (*Hotham*) go.

Sir *John Hotham*.] If *Fox* desire to speak with any body, or go from us, (in this nice point, I desire to understand you fully, and I will serve you fully,) whether are we to permit it, or not?

Sir *Stephen Fox*.] My Cash-keeper and Book-keeper are gone to the *Exchange*; and if I am not so ready in it, you will excuse me, and have no ill thought of me, for I protest I never knew of this before.

Ordered, That Sir *John Hotham*, Sir *Robert Peyton*, and Sir *John Holman* do accompany Sir *Stephen Fox* to *Whitehall*, and that he do bring his Ledger Book, Cash Book, and Journal, and his Receipts for Money by him paid, "for Secret Service;" [and he is enjoined not to go out of the company of the said Members, before they return to the House; and that no Member do depart the service of this House, untill Sir *Stephen Fox* and the other Members do return.]

Sir

Sir John Trevor reports, from the Committee of Lords and Commons, Rules and Orders about the Tryal of the Lords in the Tower, (*which see in the Journal.*)

Sir John Hotham, and the rest, return from *Whitehall*, and report, That, according to Order, they attended Fox to *Whitehall*. They were not half a quarter of an hour there, but Fox called his servants to bring such Books as they had in their custody, and sent for other servants that had the rest. Some great Books were brought into the room; but whilst he sent for the Acquittances, the Lord Chamberlain* came in, and spoke to Fox. Fox said, "These Gentlemen are some Members of the House, and I shall not speak without their hearing." My Lord Chamberlain said, "I take notice that you are employed to search for Books and Papers, but you shall not take any away out of *Whitehall*." I replied, "Some, it seems, do *make friends of the unrighteous Mammon*. Your Lordship has quick information of what we came about, for our House-doors were shut." My Lord Chamberlain saw the mistake, and would have debated some things, but I said, "I was not sent to argue this, or that, but to obey my Order." (*He had been so taught.*) My Lord Chamberlain was very desirous to tell us why those Books were not to be taken out of *Whitehall*; but I said, "Let me have what your Lordship would say in writing, and I will inform the House of it." But what he said was, "That he dared not consent that any Books should go out of *Whitehall*, without the King's Orders, nor that we should inspect any Books, without the King's command." I had forgot one thing that my Lord Chamberlain said, viz. "I would not do any thing that should look like the displeasure of the House of Commons; but I believe if the House address the King, they may have their desire †."

Several moved, "That Fox should tell the House, upon his memory, when, and what Monies he had paid to Members of the former Parliament, and if the House find that he omits any thing wilfully, that they will take an Order with him."

Sir Stephen Fox.] I hope the House will not lay this upon me, that no man could have imposed upon me. It is so easy a way to ask the King's leave for the Books, &c. that I hope you will take that way. What you desire to know is four years ago, and I cannot charge my memory with it.

Mr Sacheverell.] I hope he can remember to acquaint the House, what he told the Committee. He has named

* Earl of Arlington. † This Report is not entered in the Journal.

some Gentlemen of the last Parliament, whom he has paid Money to, &c.

Sir *John Trevor*.] For my part, I am one of those that never had any Money. What Question you put to *Fox* is a general Question. If he has said any thing to your Committee, they may report it; and then ask him, &c. and he is obliged to answer; but to make him a reprover is very indecent.

Sir *Stephen Fox*.] When I attended the Committee, several Questions were asked me. I named no persons to them: They named some to me; and I told them all the truth I could.

Ordered, That Sir *Stephen Fox* do, upon his memory, name to the House such Members of the last Parliament as he paid Money to, for Secret Service.

Sir *Henry Ford*.] It is very fit that you should arrive at the knowlege of what the Nation desires to know. Pray ask *Fox*, what names, and what persons, and what sums?

Sir *Stephen Fox*.] At the Committee, I took no notes of what was asked me, and to recollect it, I cannot do it.

Mr *Sacheverell*.] I desire to know of him, during the time he paid Money "for Secret Service," whether he cannot remember a name? If he cannot, I can.

The Speaker.] Who did you pay Money to, of the Members of the last Parliament, "for Secret Service?"

Sir *Stephen Fox*.] These are hard circumstances I am under, either to disobey the House, or to divulge a secret by the King's command. I can name so few persons, that it will give no satisfaction to the House. I named none but what the Committee named to me, and my memory is not good enough to repeat it. It may be, the persons may have an Action against me. Upon my memory I cannot tell who I paid Money to "for Secret Service," and who upon other Accounts. I humbly pray, that I may not be put to answer.

Sir *Robert Peyton*.] *Fox* has Receipts from the persons, and those will justify him—Possibly some of the persons may be in his eye.

Mr *Bennet*.] Seeing you have nothing but evasive answers

wers from *Fox*, I would have him withdraw, and consider what is fit to do with him.

Mr Williams.] They that will be ridden shall be ridden—You have been strangely used at *Whitehall*. Let him withdraw, and then you will consider what to do with him.

Sir Robert Howard.] The list of all the Members, &c. is a way proposed to do your business. Will you not assist your own Order, by letting him have a list to help his memory? If it be so great a thing as you apprehend, let not *Fox* pick and chuse whom he will to accuse.

Mr Boscorwen.] For *Fox* to be the first accuser seems hard. But let the Clerk read the list of the names of the last Parliament, and *Fox* will be careful to tell you no untruth in those he shall name to have received Money, and not forfeit his reputation.

The Clerk was ordered to read the names of the Members, one by one, in the Catalogue, beginning with the Speaker, &c.

Fox charged *Mr Seymour*, Speaker, at the end of every Session to have received 1500*l.* as *Sir Edward Turner* had received before him.

Mr Seymour somewhat affrontively answered,] I would have *Fox* answer you, whether I received any Money before I was Speaker? In the presence of God I speak it, I never, directly nor indirectly, disposed of any Money “for Secret Service.” I told the King, “That my fortune was not sufficient for that service” (of Speaker,) and I was paid the Money out of the Exchequer; but that was so troublesome, I desired it might be paid another way; and it was the only favour Lord *Danby* ever did me, to let me receive it out of the Money appointed “for Secret Service.”

Sir Stephen Fox.] Neither Clerk nor Agent of mine, to my knowledge, paid any to *Seymour*, &c. I might have paid some to counterfeit names I did not know. I paid

1. *Sir Charles Wheeler* 400*l.* per Annum, upon the account of “Secret Service.”
2. *Sir Jonathan Trelawney* 4 or 500*l.* per Annum, upon account of being put out of the employment of the Excise.
3. *Robert Roberts*, Esquire, 500*l.* per Annum, upon account of “Secret Service.”

4. Sir *Philip Howard*, upon account of a Farm he had of the Excise, 4 or 500*l. per Annum.*
5. Sir *Courtney Poole* 1000*l. per Annum*, upon account of "Secret Service."
6. Sir *Richard Wiseman* 400*l. per Annum*, as the King's Bounty.
7. *Thomas King*, Esquire, had some Money, but I know not how much.
8. *Thomas Price*, Esquire, 400*l. per Annum.*
9. *Herbert Westphaling*, Esquire, 200*l. per Annum.*
10. *Humphry Cornwall*, Esquire, 200*l. per Annum.*
11. Sir *John Barnaby* 200*l. per Annum.*
12. Sir *Lionel Walden*, upon account of a Farm of the Excise, 300*l. per Annum.*
13. *Daniel Collingwood*, Esquire, upon the same account, 2 or 300*l. per Annum.*
14. *Somerset Fox*, Esquire, had a Pension paid out of the Exchequer, but what I cannot remember.
15. Sir *Job Charlton* had 1000*l.* Pension whilst he was Speaker.
16. Mr *Knowles* 200*l. per Annum*, upon account of the Excise.
17. *Robert Philips*, Esquire, had 300*l. per Annum*, upon the Excise.
18. *Randolph Egerton*, Esquire, 4 or 500*l. per Annum*, upon the Excise.
19. Sir *George Reeves* had several sums of 500*l.* paid him at a time.
20. Sir *Thomas Woodcock* had 200*l. per Annum*, out of the Excise.
21. *Henry Clerk*, Esquire, of *Wiltshire*, ever since he was out of the Prize Commission, 400*l. per Annum.*
22. Sir *John Talbot* 500*l. per Annum*, upon account of "Secret Service," paid out of the Excise.
23. Sir *Philip Monckton* 300*l.* Pension out of the Excise.
24. Sir *Gilbert Gerrard* 300*l. per Annum*, on account of his Farm in the Excise.
25. Mr *William Robinson* 200*l. per Annum.*
26. Mr *Edward Progers* 400*l. per Annum.*
27. Colonel *Roger Whitley* 300*l. per Annum*, on account of a Farm in the Excise*.

Saturday, May 24.

On the Earl of *Danby's* Plea of Pardon,

Mr *Sackeverell*.] If you allow this Plea of Pardon, your Lives, Liberties, and all, is given up. I move that you will stand upon the vindication of your Right, and

* The above List is not inserted in the Journal.

send

send a Message to the Lords, "That, till the matter of *Danby's* Pardon be settled, and that of the Bishops, &c. you cannot proceed."

Sir Thomas Clarges.] I move that the whole House may go up to the Lords in a body to represent this matter, and to demand Justice against *Danby*. This will be so public a thing, that it will tend more for your advantage.

Mr Powle.] I attended the Committee of Lords and Commons yesterday, and "the Papers the Lords delivered us," we said, "we received only as Proposals; though the Lords were not so kind as to answer our Proposals, yet that we should theirs." And if you please, give directions, to have whereby to answer the Lords in what may arise.

Mr Garroway.] Consider the consequences; now to change Councils would be but a vain thing. Therefore I would have no other Question put, but to insist upon what you formerly resolved as to the Lords Spiritual, and to give Instruction to your Committee to make no Answer to the Lords Propositions yesterday, till we receive an Answer from the Lords concerning the Lords Spiritual. I am for drawing Reasons and Representations of your Proceedings to the Lords. If the Lords will deny us this, and go to a new way of Judicature; if it must be a breach, let it be a breach. I had rather the five Lords should escape, than that *Danby's* Pardon should stand good. If it does, you come here for nothing, but to give up the whole legislative Authority. (Yesterday, we had a sad example of Pensioners, &c. If their names rest upon your Books public, nay, though you take care to secrete them, the people will pull them to pieces.) I would insist upon your Right with Reasons, and have them printed.

Mr Hampden.] I should be sorry if the House was afraid to do its duty, for fear of a Prorogation. When I heard of "a stamped Pardon by Creation, &c." who knows but the five Lords in the *Tower* have such a Pardon? A hundred Papists at *Rome* may pretend to such a Pardon. I hope you will settle these points, and insist upon this of the Pardon.

Sir William Hickman.] That matter of the Pardon has

been so long and fully debated, that I would lose no more time about it, but let the Committee draw Reasons, &c.

Mr *Sacheverell*.] I propose that you would resolve that an Answer be returned to the Peers, about the Tryal of the Lords, with Reasons why you cannot proceed, &c. and appoint a Committee.

[*Resolved*, That an Answer be returned to the last Message of the House of Peers, touching the appointment of the Tryal of the five Lords in the *Tower* to be on *Tuesday* next, with Reasons why this House cannot proceed to the Tryal of those five Lords, before Judgment be given of the Earl of *Danby's* Plea of his Pardon; and the point of the Bishops not voting in any Proceedings upon Impeachments in capital offences be settled; and the Methods of Proceedings adjusted; and that a Committee be appointed to prepare and draw up the same.]

Sir *John Trevor* reports from the Committee of Lords and Commons, &c*.

Sir *Francis Winnington* reports, from the Committee of Secrecy, Money given to Members of the last Parliament, for Secret Service.] I have brought every particular information, and you shall see whether your Members have any wrong. There was 20,000*l.* *per Annum* paid quarterly by the Commissioners of Excise, "for Secret Service," to Members, &c. mostly by Mr *Charles Bertie*, whereof no account was given to the Exchequer, but "for Secret Service." *Bertie* was examined at the Committee, whether he paid any of the 20,000*l.* to Members of Parliament. He answered, "That he had a Privy Seal to pay it without account, and he was not at liberty to tell how he disposed of the Money, till he had the King's command." Next, though Sir *Stephen Fox* has taken a great deal of matter out of my hands, yet, there are some more than he has acquainted you with, who have received Money, viz. to Sir *Richard Wiseman*, and one *Knight*, which *Wiseman* paid, by a false name, each of them 400*l.* *per Annum*. Mr *Roberts*, at one or two payments, 500*l.* and Mr *Price* 400*l.* Sir *John Fowell* at twice had 500*l.* of *Fox*. *Poole*, *Talbot*, and *Wheeler*, as before. Now that I have summed up the substance of other Evidence from payments in *Danby's* time, there came in Tallies of 20,000*l.* *per Annum*, "for Secret Service," out of the Excise. Major *Huntington* and Sir *John James* paid the Money. Sometimes the Money was paid before the Quarter-day, and when Tallies were struck, Papers were delivered back. A Book of Names there was, to whom Money was paid; and *Bertie* had an Agent, who says, "That after the Treasurer was impeached,

* This Report is erased in the printed Journal.

about the 24th of *December*, *Bertie* came in great haste to him for that Book with all Letters and Acquittances, and that Book has many false names in it. And if he saw the Book, he could tell what Members were concerned, and under what head he stands." The Book of 20,000*l.* was increased by *Danby* in his time, for formerly it was not above 12,000*l.* per Annum for Pensions. Farther, there was paid out of the Exchequer for Mr *Chiffins*, who delivered about a hundred Acquittances to *Bertie*. Before the Parliament did sit, there were greater sums paid, than at other times. The Paper the Committee took, &c. mentions other persons. Sir *Joseph Tredenham* had 500*l.* per Annum, and Mr *Piercy Goring* 300*l.* per Ann. Sir *Robert Holt* had several sums to maintain him in prison. Sir *William Glascott*, and Sir *John Bramstone* had several sums, but we could not discover the particulars. *Wiseman*, *King*, and *Trelawney* offered to sell their Pensions to the Commissioners of Excise, and did pretend, that they might have Money before-hand, and the Commissioners had a discount of 12 per Cent. *

[Ordered, That Sir *Richard Wiseman* and Mr *Knight* be immediately sent for to attend this House.]

Sir *Thomas Clarges*.] I move, that persons who have received any Money the last Parliament, may be incapable of any trust in the Government, and refund what they have had."

Sir *Francis Winnington*.] When such a Report is brought in, it must be read at the Table, and I am to be discharged of the Papers, and then I shall make a Motion for your service.

Mr *Sacheverell*.] I see several Gentlemens names, who received Pensions, in other persons names besides their own, by names not known. And one of the Witnesses said, "To persons unknown, but by directions from Mr *Bertie*."

Sir *Francis Winnington*.] Another business has intervened. I found several Witnesses very willing to make discoveries, but in reality they were threatened. (But discourses of the Committee were divulged.) A little fellow (a Turnkey) led us to the greater. I move, therefore, that there may be some way, or method, to know the bottom of this; whether you will call Witnesses to the Bar, or to the Committee. Apply your remedy, when you

* This Report is not entered in the Journal.

know the disease. I do say, that if any man takes Money to sell his Country, I would use the utmost power of punishment, that Parliaments may not be lost.

Mr *Bennet*.] Here is good Evidence against Mr *Bertie*. If you have no farther account of this matter, proceed upon him. If you get the Book out of him, you have all. If not, make an example of him, and you will have the rest.

Sir *John Trevor*.] If these Papers be left in the Clerk's hand, a superior power may command them from him; therefore let them be in the hands of the Chairman.

Sir *Francis Winnington*.] I would not be used as Sir *Edmundbury Godfrey* was, whilst I have such Papers about me, as I have reported. Really, I believe the Papers are of that nature, that they ought to be in the custody of the House, and let the Speaker keep them.

Sir *John Trevor*.] I kept Papers relating to the Plot two months in my hands, after I had reported them. I know no reason why *Winnington* should not keep them.

Mr *Garroway*.] Enter them upon your Books, and they will be as safe as all the rest of your transactions.

Sir *Joseph Tredenham*.] I move that they may not be entered upon your Books, till Gentlemen that are named have justified themselves.—If you will enter upon their justification, I will now proceed to my own.

Mr *Boscawen*.] According to my observation, the Order of the House is, that immediately they be heard; and, in justice, do not enter it into the Journal till they be heard.

Sir *Thomas Meres*.] Your Question is, Whether the Papers shall be entered; but if these Gentlemen named think the entry will be detrimental to them, it is but reasonable that they should be heard.

Sir *Francis Winnington*.] There are very Honourable Persons named. Some say "Enter the Papers." But it is one of the hardest things in the world for a man to have Papers entered upon him; it is a kind of passing Judgment. The Votes will be sent all *England* over. Suppose those Gentlemen of Honour and Quality vindicate

cate themselves, you will tear your Book sure, and not suffer them to be upon Record.

Lord *Cavendish*.] It will be no hardship upon them to have the Papers entered, for if they justify themselves, their innocence will be entered too.

Colonel *Titus*.] It is no crime at all to have Money, nor Pension, but to have it for an ill use. Therefore let every Member concerned be heard in his Place. He may justify himself.

Mr *Garroway*.] I am not against entering the Report. But before you give your Judgment, hear your Members in their Place. This is parliamentary; and then they are to withdraw, and you judge whether you will acquit, or condemn them.

Sir *John Talbot*.] I confess to you, I am afraid what I shall say always, but more now I am in confusion, and shall speak my thoughts very indigestedly. I beg I may speak more than once if I have occasion. This is a great crime of betraying a Trust—Though this day I am more unfortunate to be in suspicion—But I desire I may be distinguished when I know the integrity of my own heart. Yesterday this was mentioned, &c. and is got about the town, and my reputation is exposed to censure. Let every man lay his hand upon his heart. I say, with great assurance, that directly or indirectly I never took one shilling as a gift, or begging, from the time the King came in. I do disown any thing by way of “Secret Service” to influence my Vote here. I will submit myself to the censure of the Law, to be tryed by that Law. I will submit it to any judicial way of proceeding. Give me leave to open this matter to you. I desire to justify myself, and to live no longer than I can do it. Some Gentlemen, besides those, have been mentioned, their number not great. When the Act passed for the Excise to be made a Revenue, when the King came in, it was thought an advantage to the Revenue, and ease to the Country, for Gentlemen to manage the Excise. For that Clause was put into the Act, to impower the King to let it for three years, that such Contracts might be good in Law,
and

and another shall not proceed, but such as is recommended at the Quarter Sessions, and he shall have the refusal, and not to be let under the rate he refused it at. When the rate was put, we had the refusal, and this was my case: I paid the rent. At last Lord *Clifford*, when the Farm was just going out, made a private contract, without our knowlege, and disposed of all those Farms to four or five other persons, without our knowlege. I will not censure Lord *Clifford*, but I will say this, that the King's Revenue never was kept up, till it was in that method again. One of the Farmers told me, "That the Treasurer made a Contract to other persons, and let us go, and offered 10,000*l.* a year more than they were to give, and advanced it at 6*l.* per cent. and no more, and so made the proposition better." But he told us, the King was resolved, and wanted Money. (I think about this time the Triple League was broke.) I said to Lord *Clifford*, "That no man will turn out a tenant that pays his rent well: I hope the King will be no worse than other men." Lord *Clifford* replied, "The King intends not to use you ill, that have served him and his Father well." Upon this the King said, "He would not put us upon hardships, but we should have some consideration for our Farm." I appeal to Sir *Stephen Fox*, whether I am not in the list of names of those to whom the King intended to give compensation for their Farms taken out of their hands; and I appeal to him, whether I had not the Pension under that consideration. But had it been a Gift, or Grant, and not under any consideration whatsoever, the King has employed me in several Trusts; if I have changed my principles, or been guilty of the practices of any immorality, I beg that consideration, not to be exposed to that cruelty, not to be exposed to public censure.

Colonel *Whitley*.] I am one under that unfortunate list of Pensions. I was one of those in the recommendation of the Country, for the farming the Excise, &c. I had a Covenant of 10,000*l.* from *Dashwood* not to supplant me, &c. We fell into Suit, and at last into an Award, and till such time I never touched a penny of the Money. I had

had in all 900*l.* which I received at several times. This is the true state of the case. If I did betray my Country, &c. I am not only fit to be turned out of the House, but out of the World. I have had Money a long time due to me, and can get none of it. Be pleased to examine what relates to me as publickly as you please.

Sir *Stephen Fox.*] I did distinguish carefully, of the lists of persons lately concerned in farming, &c. and in it, several Members had Pensions; and some had that were not Members. *Talbot* was careful in expressing the reason in the Receipt of the Money. He would not receive it till he had it entire, and then received it, as a person lately concerned in the Excise. You were told yesterday, "That *Talbot* and *Trelawney* were concerned as Farmers." *Howard* was in a Farm, and came in upon another man's interest. *Egerton*, from first to last, was Farmer for *Staffordshire*.

Colonel *Whitley.*] Yesterday I attended disbanding the Army, and I had so great a trouble upon me, that I came to justify myself, and I crave leave to go back again. *He bad leave.*

Mr *Bennet.*] Pray let us speak with a Bounty-man.

Sir *Philip Howard.*] If my Case be distinct from others, I hope I shall be so judged. I am one of those to be considered under the head of "Farmers of the Excise;" and I desire I may come under the head of those who came in upon a valuable consideration.

Mr *Harbord.*] This may well admit of a distinction, but not till you have farther heard the matter. If you find that the King's Bounty went to one sort of Parliament-men, and not to another, you may guess by that, for I could, in the last Parliament, have told you how the Question would go. If a Pensioner went not well, slash he was put out of his Pension. I believe these Gentlemen would not do an unworthy thing, but let the Committee examine it, that they that have had their share of that, may have share of this.

Mr *Hale.*] Here is a great hardship upon these Gentlemen, I hope they will clear themselves. I would distinguish

guish those who were recommended to farm the Excise, and those who were not, and by their Votes here. I would appoint the Committee to state the case of those recommended by the Country, and those not; but I would not have their names entered into the Journal.

Sir *Joseph Tredenham*.] The Question before you is, "Whether you will enter the Report from the Secret Committee into the Journal?" A Pension to betray one's Country is a detestable thing to receive by any body, and I do utterly deny to have received any. I had the honour of the favour of my Prince, and I had his favour when I made application for it. Avarice was never my humour. A Gentleman having a small Government called *Cheade Castle*, which lay nearer me, upon a Reversionary Patent, I was put upon it to get him to resign his Government. He had 250*l.* and 250*l.* for quitting that Castle. I have had the honour here to be a zealous assertor of the Protestant Religion, and in the Country so too. As for my Vote here, I gave it for Money, that the King should not supply his necessity by extraordinary means. *And something be reflected upon the Committee, which the Compiler could not bear.*

Sir *Francis Winnington*.] As for what *Tredenham* says of the nature of the Secret Committee, he need not reflect on the Secret Committee, but that it borders upon "Secret Service." He has not observed the old Parliament Committees. I have heard that *Tredenham* has reported, "That because he defended the Duke of *Lauderdale*, I would be revenged of him." As for this Castle, &c. when I was Solicitor General I passed a Warrant, &c. but I appeal to him whether he told me of the 500*l.*?—Because he has given some sparring blows toward me, I desire he may name the person.

Sir *Joseph Tredenham*.] I desire that grace for my passion which I must allow for others. This putting me in the van (of the Report) of these Gentlemen, does look like something of pointing at me. I have had considerable places offered me, but I would not have Gentlemen turned out for me—As for this of *Lauderdale*, it is but a hearsay.

Sir

Sir *Francis Winnington*.] He dwindles this of *Lauderdale* to a flying report. There are thirty before him in the list, but had he been last you would have found him out.

Mr *Harbord*.] This is a hardship, that a private person should use one so, that has done you service. If *Tredenham* got a Castle one way, *Winnington* lost one of the best places in *England*, (Sollicitor General,) for doing his duty here, and I hope God will reward him.

Sir *Henry Capel*.] It is no wonder, if the Committee of Secrecy go new ways to work, (as *Tredenham* alleged,) you must consider that never such new things were done before. —Never such conspiracies. The Chairman (*Winnington*) has most dexterously and prudently made enquiry into this matter of the Pensioners, and it becomes you to be very severe to any man that makes such reflections. *Many called Tredenham to the Bar.*

Sir *Thomas Clarges*.] What need you call for proof? *Tredenham* has confessed “That he had 500*l.* to enable him to buy a Castle.” What should you go about to proceed farther? He called to *Winnington*, “Prove it, prove it,” very preremptorily, and you ought to censure him.

Sir *Joseph Tredenham*.] I beg Pardon for being too ready to give credit to a report, &c. but when I consider the smallness of this matter of the Castle, which I did buy only for convenience of the situation near my estate, I submit to your censure, and beg your Pardon. Pray consider how difficult it is for me to speak. I have had no time to prepare myself.

Sir *Eliab Harvey*.] At this rate, all your Committees may be arraigned. It was so last Parliament in the Committee for *Danby's* Articles, &c. Mr *Bertie* arraigned the Committee then. I beg I may not be of any Committee for the future.

Sir *Thomas Clarges*.] If you will send to Colonel *Birch*, who is Auditor of the Excise, &c. you may have all the Farmers of the Excise from 1672.

Sir *Richard Wiseman* at the Bar.

The Speaker.] The House is informed that you have disposed of several Pensions, of four times 400*l.* per Annum.

Annum. From whom did you receive the Money, and to whom did you pay it, and for what use?

Sir Richard Wiseman.] Those I received and paid I will give an account of in writing. I never employed it for a Mr *Knight*, nor received it for Mr *Knight*. I know one *Knight*, Sir *John Knight's* son; when I saw him last, he was of the *Temple*; he had no transactions in the Money. I named him, because you, Mr Speaker, named him.

The Speaker.] Not long since, in the last Session of Parliament, you kept a good Table; of whom had you the Money to maintain it?

Wiseman.] My Tenants gave me my Money to keep my Table. I had no Money from Sir *Stephen Fox*, nor Mr *Bertie*, nor by his Order; nor from Mr *Chiffinch*, nor by his Order. (*This he spoke rudely and surlily.*)

The Speaker asking him, "Whether he had no Money for keeping a Table but from his Tenants?" in a very preremptory manner he answered, "No." *He withdrew.*

Sir Thomas Lee.] This answer of *Wiseman*, and the manner of it, is not usual. If you allow this to any man at the Bar, to give what he is asked in writing, you will lose your Authority, and make an ill example for the future. If once you be put off with writing Answers to your Questions at the Bar, he will have Counsel. You must tell him, "He contemns the Commons of *England*, if he makes no Answers to the Questions you ask him."

Wiseman again at the Bar.

The Speaker.] The House is not satisfied that you shall give your Answer in writing. They require a direct Answer from you to what Questions they shall ask you. I ask you, what Annuity or Pension you have received upon your account from the Excise, or any other person, for your particular use?

Wiseman.] If I might have ever so much, I cannot tell you. I ask but a reasonable thing, to give my Answer in writing, and I will justify it by Witnesses, and authentic Testimony. But to a thing I am not prepared to answer, my reputation will be lost without reparation. I say not, I will not answer, but I will make a reasonable Answer, like a reasonable man.

To the Speaker's Question,

Answer.] I remember no sum whatsoever.

To the Speaker's Question,

Answer.] I have received Money from the Excise, by a Letter from Mr *Bertie*.

To the Speaker's Question,

Answer.] The last sum I received was five or six years ago. I cannot remember how much any of the sums were.

The Speaker.] Did not you receive Money in the name of a Knight, or for one Mr *Knight*?

Answer.] I received none of the King's Money, for any other person, I aver it. I appointed nobody to do it.

To the Speaker's Question,

Answer.] I never gave any Money to pay bills for housekeeping, I stand upon it. *He withdrew.*

Sir *Stephen Fox*.] I did say *Wiseman* received 400*l. per Annum* from me, till *Michaelmas* 1675, and I did so at the Committee. I said I could give no answer to *Knight*, but *Wiseman* could, and for him 400*l. per Annum* was paid, and three other persons more. I charge not *Wiseman* with receiving this always, but some of it to him I never failed to pay.

Wiseman again at the Bar.

The Speaker.] You have had time given you to consider the Questions proposed. The House does expect a more direct Answer. This does so nearly concern you, that they expect you provided to give an Answer, and therefore have sent for you down again, before they give their Judgment.

The Speaker asked him the same Question.

Wiseman.] I received no Money from Sir *Stephen Fox*, and I know nothing of "Secret Service" received by the King's Order. Give me time, and I will tell you the exact sums I received.

The Speaker.] In this, you are disproved by *Fox*, and if you will run the hazard of the displeasure of the House, you must expect what will follow.

Wiseman.] I have told you, I remember not to have received 400*l. per Annum* from *Fox*. I cannot remember other sums. I persist in it, none by the King's Order. So far as I am able, on the sudden, I will give you an account. When the Excise was let by Lord *Clifford*, it was for 500,000*l. per Ann.* Some friends put me upon it to farm the Excise. We gave 20,000*l. per Annum* more,
and

and 70,000*l.* advance Money, for which service the King directed I should receive some Money, but I remember not the particulars; there was but one Contract. I acted by another Party—I cannot tell whom—I do now remember the man, it was Alderman *Ford*. I know not whether I received seven, eight, or nine hundred pounds.

The Speaker.] Did you receive any Money from Mr *Bertie*?

Wiseman stood mute some time, and then answered,] I have not received any Money from Mr *Bertie* this year and a half. I had no Order for continuance of my Pension out of the Excise. That which the King gave me was annual, but I received it in a gross sum. I sold the annual Pension the King gave me for seven, eight, or nine hundred pounds. The Pension was not granted me for life, but till the King declared otherwise. The assignment of the Pension was made to the Commissioners, or Farmers; I believe it was assigned to Major *Huntington*, Mr *Dawson*, and Sir *John James*. This he spoke drawlingly, and withdrew.

Monday, May 26.

Mr *Sacheverell* reports the Narrative of the Proceedings relating to the Tryals, &c. and Reasons. Which see in the *Journal*.

A Motion being made for a softer term, &c. than “Injustice,”

Mr *Garroway*.] You cannot say less than you have done, for the Lords have denied you Justice. If the Lords come not up to the proposals of your Committee, print your narrative. If you are tender of words, when all is at stake, it is an ill time to temporize. I should be glad if the Lords would confer with you in a parliamentary way; if not, you cannot do less than vindicate what is in your power. And what will you signify, if a Minister of State go away unpunished, by a Pardon? If they will break the late King’s Constitution*, &c. let not us. I

* In his Answer to the nineteen Propositions of both Houses of Parliament, viz. “The King, the House of Lords, and the House of Commons, have each particular Privileges:” And, amongst those which belong to the King, he reckons power of pardoning. After enumerating of which, and other

his Prerogatives, his said Majesty adds thus again, “That the Prince may not make use of this high and perpetual power, to the hurt of those for whose good he hath it, and make use of the name of public necessity, for the gain of his private favourites and followers, to the detriment of his people.”

would

would keep the door open to reconciliation, but if the Lords will not come up to this, so reasonable, I would then publish the thing.

Mr *Sacheverell*.] I would clear this point, which, I believe, is warrantable from the Lords themselves. If the Lords are more tender of our Rights than we ourselves, I know not what will become of the reputation of this House. The Lords have owned the Non-commitment of Lord *Danby*, when impeached of High Treason, &c. to be erroneous; and shall not we then say so? It was done in another Parliament, they have arraigned it, and you do so too, and I think the Lords proceeding is evasive.

Sir *Nicholas Carew*.] I would not deliver up our Rights, but I would not give the Lords just ground of exception. The word "Injustice" is hard—It sounds brave for the Commons to quarrel with the Lords—It is a fine feather, but the Commons will pull it out. We have a great many good things depending, and if we can get them without quarrelling with the Lords, let us.

Sir *Joseph Williamson*.] The Question is, Who has brought us to this brink of extremity? I have wondered at these Proceedings. You have mighty reason for what you have done. You have dissembled these Proceedings of the Lords so much, that it justifies them in good correspondence. It was "Injustice" done you, the Non-commitment of Lord *Danby*, and the Lords have owned it "erroneous," but that comes not up to the point. If the prisoner escapes, for not committing him, that is "Injustice" with a vengeance. The Lords tell you, "The Bishops have asked leave to withdraw, &c." and they cannot depart without the Lords leave, &c. Is not this an Answer to your Question, and is not this an evasive Answer? There is a sense in the House not to use the Paper reported till the utmost extremity, and to come to expostulation. If you come to such an extremity, the words cannot be too sharp; and you may let it lie till you have use of the thing.

Sir *Robert Howard.*] In all the track of the whole business, there is a perfect track of evasiveness. The Bishops will sit on one point, and not on another. But I cannot imagine why we should call it "Injustice," what use there is of such a word. Now all things possible to be imagined require your help, is it not possible to say another word? This is a sentence pronounced upon the Lords Judicature. The Paper is well drawn, and there is no need of a hard passionate word to help the Reasons; they themselves will convince the World.

Mr *Swynfin.*] If you are resolved to lay by this Report unpassed till you go to the Committee of the Lords, then spend no more time on it now, till you have an Answer from the Committee of Lords and Commons.

Sir *John Trevor* reports from the Committee of Lords and Commons, that the Lords gave this Answer, "That they had no power from their House to give any farther Answer to those matters, or to debate the same with the Committee of this House."

Sir *John Holbam.*] To my observation, the Lords have not done what they ought, but have evaded your whole Proceedings; therefore I wonder we should be so nice in this matter that you have little time to spend in. If the Proceedings do not satisfy the World, it is not your fault. How will you answer it, when you consider that the Lords have done what a private man would not do to a private man? They have broken their word, and is not that "unjust" in the greatest measure? I desire you to agree with the Committee.

Mr *Swynfin.*] I would have the single Paragraph read, where the word "Injustice" is. You say, "The Lords are sensible of the Injustice, &c." You must have it out of the Lords Book to ground this upon. They say, "They have expressed no such thing." I would therefore have their own words, viz. "Error of their Proceeding."

Mr *Vaughan.*] He that argues upon the words, argues upon the whole thing. Unless you send to the Lords to sit, they will rise, and so it will be too late to deliver your Reasons,

Reasons, &c. the five Lords being appointed to come to Tryal to-morrow.

Sir *Thomas Lee*.] I would willingly hear Gentlemen argue, but you will lose the thing, unless you send to the Lords to desire a Conference, that so they may sit.

Colonel *Titus*.] I know not whether that may hinder you. It may be, the Lords will deny you Conference, and then there is an end of it.

Mr *Sacheverell*.] I should be loath to agree to go to the Lords for a Conference, and be denied it; but this is a matter of great importance to the Kingdom, and you may agree to that Conference “of matters of great consequence to the Kingdom, and for preservation of a good correspondence between both Houses.”

Sir *Francis Winnington*.] I second that Motion. It has been supposed that the Lords will not grant a Conference on what relates to their Judicial Authority; but if the Lords will not confer with you upon what belongs to the Nation; whether we shall destroy our Laws, or preserve them—They give you excellent Rules of Discipline at the Committee, for your hats to be off*, but not a word of Answer to our Questions about the Bishops, &c. We must at last name the Lords that obstruct this Proceeding, and if they deny us Conference, you may imagine the consequence.

Sir *Eliab Harvey*.] For satisfaction of the House, put in those two words to the Question, “Unjust and evasive,” whether they shall stand in the Paper.

Colonel *Titus*.] Those who go about to deprive and hinder Gentlemen of Debate, destroy all liberty of Parliament Speech—One word seems so harsh that it is easily remedied, if you find a soft and smooth way of doing it. I would not use the rough, when a better and fairer way will do the thing. The King never gives a preremptory denial of a Bill, but “*Le Roi s’avisera*.” I would not bring a railing accusation against the Devil himself. I would have the word “Error” instead of “Injustice.”

* “None to be covered at the Tryal but the Peers.” See the Rules in the Journal.

Mr *Williams.*] It is either “unjust” or “not unjust.” The Law of Impeachment I take to be, when a man is impeached, &c. he ought to be committed; and if not observed by the Lords, they are “unjust.” The Lords will strain the “Injustice” at your door; and to defend yourselves, you ought to express it; otherwise you are “unjust” to yourselves. If you speak, speak plain, and at a Conference you may maintain it. This Act of “Injustice” has led you to all this—If you study for nice words, you may beget another “Injustice.”

Sir *Thomas Littleton.*] I am of this mind, that the Lords have done “Injustice”—But the Lords have not acknowledged “Injustice,” but “erroneously” only. You have no choice of words, but must say their own words.

Sir *Thomas Meres.*] I observe great earnestness in this matter, but Order must preserve the very being of this House. It will save time, and is the shortest way you can go. There are but few words excepted against in the Paper, and you ought, by Order, to read it Paragraph by Paragraph.

The Paragraph was read.

Mr *Seymour.*] Though we express great zeal to serve a turn now, yet this may be of great inconvenience to your Proceedings hereafter. I would have the words to be “Irregular and unparliamentary Proceeding.” Till Gentlemen have more patience, and order, to hear me, I will trouble you no more.

Mr *Garraway.*] If nobody speaks against a Bill at a second reading, it is ordered to be ingrossed of course. You have had the Clause read, and exception has been made, &c. Before you can have any Question for the Clause, you must put the Question, “To put out the word.”

Sir *Thomas Clarges.*] We are much out of the way, not to read the Paragraph. It is impossible for a man to carry it all in his head. I will only keep up my claim to Order. Leave out the word, and you have all your desire besides.

Mr

Mr Secretary *Coventry*.] I cannot see how you can prosper in this word "unjust." By "unjust" he must be an ill man; a depravity of the will, voluntary, and willingly. "Error" is otherwise. You cannot make a term more biting nor afflicting.

Sir *Thomas Lee*.] I am one of those that think, whether "wilfully" or "ignorantly," that not to have Right in *Westminster-Hall*, is "unjust." The Bill of Banishment was "unjust," and Right was not done to the Commons, in not committing, &c. You were told by *Titus*, of *Le Roi s'avisera*, &c. That very Answer brought the Negative Voice in Question in the Long Parliament. Pray God you bring not your Right in Question too!

Colonel *Titus*.] If the Lords misinform you, by being misinformed themselves, you will not tell them they lye.

Sir *Henry Capel*.] The Lords and Commons co-operate, and such expressions are not to be used. This matter is different from the Courts of *Westminster-Hall*; the Lords are a higher Judicature. Methods of Proceedings should be in the most gentle way between both Houses.

Sir *Francis Winnington*.] Had it been, that we of the Committee took upon us what the Lords had said, and not reported it right, we had been strange persons; but we say, "That common Justice, and Right of imprisoning a person impeached, &c. was denied you." You affirm "That is denied you," and that is as high as the word "Injustice." If you had sent generally to the Lords, "That they had done you Injustice," that had been a reflection; but as you have penned it, it is otherwise. The Lords suffered Lord *Danby* to be present, and vote in his own Cause—It is a Judgment we make upon the Fact, and have stated it before. I will not contend for a word; but this I move, not to omit the word "Injustice" in the Paper, but put it in a greater manner if you will.

Mr *Powle*.] If you would save the Lords in the *Tower*, you may go in the harshest manner, &c. We are in an ill state, I fear, and too near a Breach. The thing presses,

and we must avoid all delay. Many times we pass severe censures upon things; but this will engage us to justify what we say, and the Lords to defend, and you to maintain, &c. and spend much of your time. I make great difference betwixt "Not to do me Justice," and "to do me Injustice." The one is through Error, the other is wilfully. Any man may make it an "Error," but "unjust" no man can prove, for it is lodged in the cogitations of men. This may make the thing irreconcilable, to fly in the Lords faces, with what one Gentleman will not take from another. And I fear, if you come to debate it with the Lords, you will have the worst of it, and spin out many days, to maintain what you cannot.

Mr *Sacheverell*.] I would have Gentlemen know, that if the word "Injustice" be left out here, they may do it in another place. I would have you consider, whether the Lords that have done this, are ignorant of the whole methods of Parliament—And so you will call it "erroneous," and they lay aspersions as much—This justifies this House of Peers. The censure is the last Parliament's Proceeding.

Sir *Thomas Clarges*.] Though this is not the same Parliament, yet the Lords are the same Persons and Judicature. If we have the very thing and sense, why may we not leave out the harsh word?

Sir *Robert Carr*.] *Clarges* says, "It is the same Judicature of the Lords that was the last Parliament." But I think not, for Lord *Danby* was then present there; it is that you complain of; and now he is out. Leaving out the word "Injustice" makes the thing not at all the milder, for this varies not the sense at all.

Sir *Edward Dering*.] Those that are for leaving out the word, do it, not as a compliment to the Lords, but for decency to ourselves. I would therefore leave out the word.

Sir *Robert Howard*.] If it will give just offence, I would rather leave out the word than keep it in. Had I the greatest enemy in the world, I would not provoke him

him with ill words: He has then the advantage of me. I would avoid difference with the Lords now. I think it is the sense of those we represent, and I would leave out the word "unjust."

The word "unjust" was left out.

Resolved, That a Message be sent to the Lords, to desire their Lordships to sit some time. And then

Resolved, That a Conference be desired with the Lords upon Matters of great Importance to the Kingdom, and for preserving a good Correspondence between the two Houses*.

Tuesday, May 27.

Colonel *Titus*.] I move you, that the Serjeant may go to the Lords Court in *Westminster-Hall*†, with his Mace, and invert it when he comes to the Court, and command your Members that are there, to attend the House.

Mr *Sacheverell*.] I will not take it for granted, that the Lords will try the five Lords to-day, but make your Order conditional, viz. "If the Lords shall proceed to the Tryal of the five Lords in the *Tower*, &c. that then, none of your Members shall presume to be present, without leave of the House."

Serjeant *Maynard*.] "That in case the Lords shall proceed to the Tryal of the five Lords, none of your Members shall be present, without leave of the House," is moved. But I would send for your Members without saying any thing farther.

Sir *Joseph Williamson*.] I would not post up an Order with supposing that thing of trying the Lords. I would rather let the Order be barely, "That the Members do attend the service of the House."

Sir *Francis Winnington*.] The Order you are about to make, might have been as well, when the scaffolds were

* When the Commons Reasons, &c. were read the next day, a second time, in the House of Lords, a long and vehement Debate ensued, and upon the issue, a Resolution was taken, to insist on their Vote concerning the Lords

Spiritual. Against which twenty eight Lords entered their Protests.

† This being the day that their Lordships had fixed for the Tryal of the five Lords.

first erected. I would have the Order only, "That the Members do give their attendance upon the House."

[*Ordered*, That all the Members that are in the Hall be immediately sent for, to attend the service of the House.]

The Serjeant of the House reported, That he did obey the commands of the House, in giving notice to the Members, &c.

A Message from the Lords, That the Lords desire that this House will sit for some time; for they have received information, that his Majesty is coming in his Royal Robes, to say something to both Houses.

[*Resolved*, That this House will sit for some time.]

Sir *John Trevor*.] For introducing Popery one design was "arbitrary Government." And another you have had the examination of, viz. "Pensions." I know not whether the Clerks have taken that matter right; whether the Gentlemen that are to examine the Journal do agree; for we are all in the dark. Never Parliament proceeded in that hurly-burly that we have done. I would have Mr *Kent* answer to what Questions you shall require of him, and bring in a list of the Members of the last Parliament, that he paid Money to, and upon what account. If you have no Record of this, you will have more corruption the next Session of Parliament, than in the last Parliament, if you go off now, without making examples of those persons of the last Parliament, that have taken Money to betray us to slavery. Men live upon examples, and without them, all will go off, and men will do their knavery without fear. I would therefore have the Clerks prepare the Information of Sir *Stephen Fox*, and let him refresh his memory, to inform you, how many Members have had Pensions, how often Money has been given them, and whether the payments are still continued; for I lay more upon that, than upon those who have Money *pro hac vice*. If they have been paid, three, four, or five years, I will judge that those are in a continuing service. A man that has voted well one Session, and then they discontinue his Pension; something may be said for that to mitigate the crime; and I will have as much tenderness and respect, in such a case,

as any man. Proceed in this way, and the people of England will thank you.

Sir Robert Clayton was just giving an account of persons who had Pensions out of the Excise, "upon consideration of their Farms," viz. Howard, Smith, Walden, Egerton, Gerrard, and Whitley; when the Black Rod knocked at the Door, and commanded the House to attend the King in the House of Lords, where his Majesty, in the following short Speech, prorogued the Parliament:

"My Lords and Gentlemen,

"I was in great hopes that this Session would have produced great good to the Kingdom, and that it would have gone on unanimously for the good thereof. But to my great grief, I see there are such differences between the two Houses, that I am afraid very ill effects will come of them. I know but one way of remedy for the present, assuring you, that, in the mean time, I shall show my sincerity with the same zeal I met you here. Therefore, my Lord Chancellor, I command you to do as I ordered you."

His Lordship accordingly prorogued the Parliament to the fourteenth of August.* But before that day, it was dissolved by Proclamation †.

* When the Resolution to prorogue the Parliament was taken, it was also resolved to procure the sanction of Council for so bold a measure, which, it was thought, would be obtained without any difficulty; one half depending on the King by their Offices, and as many of the rest being under the influence of the Triumvirate, (Lords Essex, Sunderland, and Halifax,) as, joined to the others, made a sure majority. Unfortunately, in the midst of this sage disposition, the Court was alarmed with the sudden news, "That there were Remonstrances (says Sir William Temple,) ready prepared in the House of Commons to inflame the City and the Nation, upon the points of the Plot and Popery;" or perhaps, according to the intelligence sent by Mr Algernon Sidney to Mr Saville, "That an Address was framing in the City, signed by 100,000 men, giving Thanks to the Parliament for their vigo-

rous Proceedings in discovering the Plot and opposing of Popery, and promising to assist them in so doing with their lives and fortunes." Upon which the King and his three wise men were struck with such a panic, or affected to be so, that they would not trust the very Council with their fears, till by the Prorogation they had got rid of the danger." Accordingly, on the very morning that these dismal tidings were received, his Majesty went post to the House of Peers, almost without attendants as well as advice, their Lordships having scarce time to robe, or the Commons to make their appearance, and with more brevity than accuracy, expressed himself, &c. (as above.) Ralph.

This Prorogation caused infinite astonishment and no less indignation to the Exclusionists, who expressed their resentments aloud, and without reserve; Lord Shaftsbury himself being so far transported,

ported, as even in the House to threaten, "That he would have the heads of those who had been the King's advisers on this occasion." On the other hand, the friends and partisans of the Duke were as much overjoyed. *Temple.*

The City of *London*, where the Anti-Court Party was very strong, took so great offence at this, and were so very angry, that it was thought they would have risen, but all, with much ado, was hushed, and kept quiet. *Reresby.*

The more dispassionate contented themselves with wondering, that his Majesty, in continuing the Privy Council, should publicly declare, "That he would have no Cabinet Council, but that he would in all things follow their advice, next to that of his Great Council, the Parliament;" and that now he should so suddenly prorogue that Great Council, without so much as mentioning it to the other. *Sidney.*

As to the Earl of *Danby*, though he had escaped out of the hands of the Commons by the Prorogation, he could not make his escape out of the *Tower*; though the King had pardoned, he could not enlarge him, nor would his Majesty's new Counsellors advise him to strain a point in favour of one, who, they had sufficient reason to think, would, in return, ease them of all farther trouble in his Majesty's service.

To take our leave of his Admi-

nistration, Mr *Algernon Sidney* observes, "That, at his first entrance into Power, he had engaged to bring the Parliament into an entire subjection to the King's will; to pay off his Majesty's debts, increase his Revenue, and render him considerable among the neighbouring Princes: Which are verified (says he) in his leaving 22*s.* 10*d.* in the Exchequer, 4,200,000*l.* of passive Debts, the Revenue anticipated for almost a year and a half, and the account his Lordship was pleased to give, in his Speech to the Peers, "Of the esteem the King of *France* had for his Majesty's Person and Government."

† Thus in less than three months after his Majesty had publicly and solemnly promised to act no more by the advice of Favourites and Cabals, or without that of his Privy Council, was he twice induced to trespass as publicly on that engagement: First, by proroguing the Parliament without their knowledge, and now by dissolving it without their concurrence; and that this was the matter of fact, the very Proclamation itself bore witness, in which the King stands alone, and declares the Dissolution in his own name, and by his own authority, without the mention of any Council at all, "Being resolved to meet his people, and have their advice, in frequent Parliaments." *Ralph.*

Debates in the House of Commons,

From the Year 1667 to the Year 1694.

Tuesday, October 7, 1679.

THE new Parliament met *, but was prorogued to the 17th, and then was adjourned to the 30th of the same month. At last, after seven more Prorogations, they met for the dispatch of business,

Thursday, October 21, 1680.

When his Majesty, in his Speech, endeavoured once more to wipe out the memory of past offences, by giving a very art-

* The Duke of *Monmouth* having been deprived of his Posts in the Army, and by his Majesty's command having left the Kingdom, and the Duke of *York* having returned from his exile, and having *Scotland* assigned him for the place of his residence, his Royal Highness, before his departure for that Kingdom, carried an important point with the King, which showed that his interest with his Majesty was all-sufficient; namely, the putting off the Session. All the remaining strength of his enemies lay in the House of Commons, and he was resolved they should derive no benefit from it, at least till time had somewhat qualified their fury, and proper endeavours had been used to loosen their hold upon the people. But, according to Sir *William Temple*, however artificially this matter was laid by those of the *Cabal*, they fell into the very same mistake which had occurred at the Dissolution of the last Parliament, in the manner of communicating it to the Council: All was laid upon the King, as before, who said, "That upon many considerations,

which he could not then communicate, he found it necessary to make a longer Prorogation of the Parliament than he had intended: That he had considered all the consequences so far as to be absolutely resolved, and not to hear any thing against it: That he would have it prorogued till that time twelvemonth, and that he gave it in charge to the Lord Chancellor to proceed accordingly." All the majority of the Council were astonished at so abrupt a declaration. Several rose up to reason upon it, but were obliged to desist, the King continuing positive to admit of no opposition, and, in effect, signifying thereby, "That he did not require advice, but obedience."

Care was however taken to prepare the Public for this alteration of measures by due degrees. The first Prorogation was only from the 17th to the 30th of *October*, which was followed soon after with public notice in the *Gazette*, "That his Royal Highness having represented to his Majesty, that he conceived it would be more convenient in many respects to be in his Majesty's

ful

ful turn to the several Prorogations which had postponed the Session, so much to the displeasure of the malecontents, saying, "He had made a good use of them by the measures he had taken with *Spain* and *Holland*, for mutual defence and succour, and that they could not fail to attain that end, and to spread and improve themselves still farther, if our divisions at home did not render our friendship less considerable abroad. To prevent these as much as may be (continued his Majesty) I think fit to renew to you all the assurances which can be desired, that nothing shall be wanting on my part to give you the fullest satisfaction your hearts can wish, for the security of the Protestant Religion, which I am fully resolved to maintain against all the conspiracies of our enemies, and to concur with you in any new remedies which shall be proposed that may consist with the preserving the Succession of the Crown in its due and legal course of descent. And in order to this, I do recommend it to you to pursue the farther examination of the Plot, with a strict and impartial enquiry. I do not think myself safe, nor you neither, till that matter be gone through with, and therefore it will be necessary that the Lords in the *Tower* be brought to their speedy Tryal, that Justice may be done." His Majesty then made a transition to the state of *Tangier* (then, and for a long time before, closely besieged by the *Moors*)

own dominions than those of any other Prince, and made it his humble request to go to *Scotland*, his Majesty had granted it." This notice was dated *October* 7th. The 12th their Royal Highnesses arrived at *Whitehall* "in their way" (as the *Gazette* phrases it) "to *Scotland*." The 15th the Parliament was yet farther prorogued, and the same day Lord *Shaftsbury* (for openly opposing, as *Ferguson* asserts, the Duke's residence in *Scotland*,) was dismissed from his place at the Council Board. *Ralph.*

The Parliament having been prorogued from *October* 30th to *January* 26th, on that day as many Members of each House attending as were required by their respective rules, his Majesty gave them a meeting, and from the Throne signified, "That when he declared in Council his intention of putting off the Parliament to a time so remote, it was

not without mature consideration: That he could not be persuaded from any thing that had happened since, in reference to affairs within the Kingdom, to alter or repent of that resolution: That notwithstanding, considering the present danger that threatened some of our Neighbours and Allies (the *Dutch*) he thought fit to appoint a day for their meeting again in *April*: That the distractions and jealousies at home were of such a nature, and so heightened and improved by the malice and industry of ill men, that he was unalterably of opinion, that a longer interval of Parliament would be absolutely necessary for the composing and quieting men's minds, and that therefore at the said meeting in *April* there should be a farther Prorogation, unless the condition of our Allies abroad did then require our immediate assistance."

and

and said, "the expence of it amounted to so vast a sum, that without their support, it would be impossible for him to undergo it," adding, however, "That he valued a perfect union among ourselves above all the treasure in the world; and that nothing but such an union could restore the Kingdom to that strength and vigour which it seemed to have lost, and raise it to that consideration which *England* used to have." His Majesty then proceeded thus: "All *Europe* have their eyes upon this Assembly, and think their own happiness or misery, as well as ours, depends upon it. If we should be so unhappy as to fall into such a misunderstanding among ourselves, as should render our friendship unsafe to trust to, it will not be to be wondered at, if our neighbours should begin to take new resolutions, and perhaps such as may be fatal to us. Let us therefore take care that we do not gratify our enemies, and discourage our friends, by any unreasonable disputes: If any such do happen, the World will see it was no fault of mine, for I have done all that was possible for me to do to keep you in peace while I live, and to leave you so when I die." His Majesty added, by way of compliment to both Houses, "That from so great prudence and good affection as theirs, he had nothing to fear."

And then the Lord Chancellor, by his Majesty's command, directed the Commons to return to their House, and proceed to the choice of a Speaker. They did so, and *William Williams*, Esquire, was unanimously chosen*, and was, the next day, approved of by his Majesty.

Friday, October 22.

Mr *Harbord*.] Standing Rules are to be observed, before you enter into any Debate. I would have the Clause of the Statute read relating to our taking the Oaths and the Test, to know what you have to do.

Two days being spent in taking the Oaths, &c.

* The Speaker, in his Speech of acknowledgement, most heroically devoted his estate, health, and life to their service, declaring also, in terms singular enough, "That he was their own Minister, their own only, their own entirely, and that he expected no boon, but by their grace and favour, to depart as he came, when they should please to

command him." But resigned and devoted as he was to the House, he showed a more than ordinary stiffness when presented for his Majesty's approbation; making use of no disqualifying expressions, but standing before the Throne with the air of one, who expected, but who disdained to court, his Majesty's approbation. *Ralph.*

Monday,

Monday, October 25.

The House proceeded to appoint Committees, according to the usual custom at the opening a Parliament, and the Committee of Elections being moved to be appointed,

Colonel *Birch* thus spoke.] The Kingdom has sufficiently felt the Grievance of the Committee of Elections and Privileges in former Parliaments. In short, this Committee has been very burdensome to the people, and has been near half the business of former Parliaments, and the Parliament has risen, and the business not been half done. The time has been (but I hope will never be again so) that a Vote of two or three has turned a great business, and the Nation has paid for it, and the work of Elections has been commonly to do things twice over, and after dinner has been an ill time for that Committee to sit. I hope it will be so no more. I assure you, that Committee has been more like a Pipeholder's Court, than a Committee of Parliament. Besides the great charge persons were put to, to stay in Town with their Witnesses, it may be ten or twelve weeks sometimes, and the business not done at last. But if you will hear those Elections in the House, and spare two or three hours, you will dispatch business in a quarter of the time. I submit it to you, whether yourselves will not have more Ease, and the people more Right, to hear Elections in the House; you, Mr Speaker, being a person quick, and can sum up Evidence, I wish all might be done before you. This may be somewhat new, but it alters nothing fundamental. There is no objection against it, but the newness of the thing, and we must now do new things, or else we shall never be upon a new bottom.

Colonel *Titus*.] You have been told very true of the inconvenience of the Committee of Elections, and they have their name very truly given them, "the Committee of Affections." But to alter fundamentals of Parliament, and to take away the thing for the abuse of it, I am not for that. When you come to hear all Elections in the House, I fear you will have slow performances.

Possibly

Possibly *Birch* is in the right, and I am in the wrong, but this Committee has been so ancient, to prepare things for the Judgment of the House, and to leave them to their determination, that it is a thing of great moment to alter, and not suddenly to be resolved. Therefore I would adjourn the Debate till to-morrow.

Sir *John Knight*.] In the last Parliament, many Elections were heard at the Bar. But, for what is said of altering fundamentals of Parliament, it is in your power to alter inconveniences where you find them. A long time is taken up at the Committee, in hearing Causes of Elections, before they are determined in the House, and persons who have done Misdemeanors, the Parliament not sitting long, go away unpunished. By hearing the Causes in the House, you will have a great many inconveniences obviated.

Mr *Hampden*.] The Motion is of consequence, and so sudden, that I am very jealous of any innovation. I am for mending things, but not for a sudden change; and it may be, this may come to alter the way of passing Bills. It is true, I remember in the last Long Parliament, when, upon a Report from the Committee of Elections, a Question has been only put, "Whether you agree, or not, with the Committee?" without any Report made of the Evidence on both sides; and so the House has chosen the Members, and not the Country. But that is not the old way of making the Report, which was put to the Question point by point, as the matter was proved at the Committee, and then the House has the matter before them to pass a fair Judgment upon. This matter has been moved in former Parliaments, and Sir *Thomas Crew*, when Speaker, opposed it as irregular, and an innovation. Pray keep your Committee of Elections within compass, and that is the best remedy to prevent inconveniences, and go on to naming the Committee.

Serjeant *Maynard*.] I was in the Chair of the Committee of Elections in the Long Parliament, in 1641, and the course then was this: When the Committee was named, Petitions were put in, and as the Petitions were recorded,

recorded, so they were dispatched. As they came in to the Committee, so they were heard, as were likewise Returns by undue Officers. But when the Committee came to Right of Elections, if any Question did arise, the point was stated, and referred to the judgment of the House. The mischief of the Committee of Elections comes from additions of names to the Committee by Motions in the House for persons. If the ancient course was observed, your trouble would be much shorter; that if any matter of great consequence arise, then to have it heard in the House. The course then in the House was this: The Report of the Committee of Elections, from the Chairman, was heard before any other Report, because you must have your Member to represent the Place. But I remember, I sat a year then before I could make a Report.

Mr *Bennet*.] I hope that if you will give Instructions to your Committee to bring in a Bill for regulating Elections, that will cure the business.

Mr *Boscawen*.] I desire that, before you name the Committee of Elections, you will take some Resolutions of Rules for them to govern themselves by.

Mr *Garroway*.] Why should there be a preference to any persons in nominating them of Committees? I do not see there will be practices, but I would obviate the late Long Parliament's Precedents, not to make a monopoly of men for a Committee. I would name a convenient number of this Committee, but would have no man excluded.

Sir *Thomas Clarges*.] I have seen several Journals of Queen *Elizabeth's* Parliaments, where the Committee was limited to a number, and fixed, and I hope hereafter that that Committee shall not sit in the House, as it has done formerly, like a Grand Committee, for so it will be, if all that come shall have voices.

Mr *Sacheverell*.] Now you have stated the Question—I remember, that ten years ago I saw a Committee named, and five or ten were added to it by Motion, and whilst the Committee sat, in comes a small number who were prepared

prepared and treated at Taverns, and carried what Question they pleased; and from thence came the addition, "That all that came might have voices." But that we may not innovate, I would have it as *Maynard* has told you it was formerly, that when the fact was reported, the Reasons might likewise be reported, which induced your Committee to their Judgments. But that Long Parliament were ashamed of their Reasons, and durst not avow them to all the World. I am not ashamed of my reason, nor of old ways, nor honest, and pray let it be so reported now, and let all that come have voices.

[It was agreed to.]

N. B. The Committee of Privileges is a standing Committee, and is never adjourned.

A Message from the Lords, by Lord Chief Justice *Scroggs*, and Lord Chief Justice *North*:

[*Mr Speaker*,

The Lords have commanded us to acquaint you, that they have made an Address to his Majesty, and have received his Majesty's Answer thereto; which they have thought fit to communicate to this House as follows:

"*Die Sabbati, 23 Octobris, 1680.*

"*Ordered*, by the Lords Spiritual and Temporal, &c. That the Lords with White Staves do attend his Majesty, humbly to desire him, from this House, That whereas there hath been a discovery of a horrid Plot and Conspiracy by the Papists against his Majesty's Person and Government, which still continues, his Majesty will be graciously pleased to issue out his Royal Proclamation, thereby declaring, That if any person or persons shall, within the space of two months after the date of such Proclamation, come in, and give Evidence of any Treason or Conspiracy against his Majesty's Royal Person and Government, that then his Majesty will graciously pardon such person or persons all Treasons and Misprision of Treasons, and all offences in concealment of the same, to the time limited by the said Proclamation."

Answer. "His Majesty hath considered of the Address made by the House, and is so willing to encourage all persons who know any thing of any Treasons and Conspiracies against his Person and Government, that he will cause his Royal Proclamation to issue, declaring that he will fully pardon and secure all persons who shall make such discovery, not only during the space of two months, as is desired, but at any time hereafter, whensoever such discovery shall be made."

[*Ordered*, That the consideration of the above Message be adjourned till to-morrow.]

Tuesday, October 26.

Debate on the above Message.

Colonel *Titus*.] Yesterday, when we had an account of this Address from the Lords, and the King's Answer to it, sent by the two Chief Justices, I thought there was no great matter in it. But the Lords, it seems, send a Message to the King, and receive an Answer to it, and then communicate it to us. This seems something odd, but I did believe that the Lords had a good intention in it; but now methinks it is not as harmless as I apprehended it at first; for by the Answer, the King will not only "pardon Treasons relating to the Plot," but "all Treasons," in an indefinite time. But how has this Plot been decried by the insinuation of some others, "That it was a Presbyterian Plot, and a Protestant Plot, and the Conspirators in a Meal-Tub*?"

* *Dangerfield*, a subtle and dexterous man, who had gone through all the shapes and practices of roguery, and in particular was a false Coiner, undertook now to coin a Plot for the ends of the Papists. He was in Jail for debt; and was in an ill intrigue with one *Cellier*, a Popish Midwife, who had a great share of wit, and was abandoned to lewdness. She got him to be brought out of Prison, and carried him to the Countess of *Porwis*, a zealous managing Papist. He, after he had laid matters with her, got into all companies, and mixed with the hottest men of the Town, and studied to engage others with himself to swear, "That they had been invited to accept of Commissions, and that a new form of Government was to be set up, and that the King and the Royal Family were to be sent away." He was carried with this story first to the Duke, and then to the King, and had a weekly

allowance of Money; and was very kindly used by many of that side; so that a whisper ran about Town, that some extraordinary thing would quickly break out. *Dangerfield* having some correspondence with one Colonel *Mansel*, he made up a bundle of seditious but ill contrived Letters, and laid them in a dark corner of his room; and then some Searchers were sent from the Custom-House to look for some forbidden goods, which they heard were in *Mansel's* Chamber. There were no goods found, but as it was laid, they found that bundle of Letters; and upon that a great noise was made of a discovery. But upon enquiry it appeared the Letters were counterfeited, and the forger of them was suspected: So they searched into all *Dangerfield's* haunts, and in one of them they found a Paper that contained the scheme of this whole fiction, which, because it was found in a Meal-Tub, came to be called

But

But an indefinite time for all discoverers to be pardoned looks like encouragement for them that resolve to conspire. For instance; if at any time I can have my Pardon, I will go on with my Plot; and when it takes air, then I will come in and discover, escape myself, and hang my friends. It is good for one thing; clipping and coining may go on seven years, get money and discover some workmen, and so be a man. It is so like Popery that it makes me not like it; encouragement to go on in villainy, and have a Pardon at last. I would address the King to limit the time to two months, and then you may be as civil to the Lords as they have been to us.

Mr *Boscawen*.] What need discoverers come in two or three months hence, when they may come any time afterwards? I would not have you address the King alone, but would mend this Address of the Lords, and send it to them at a Conference.

Sir *Thomas Clarges*.] It seems, the Lords waved a Conference with us before they delivered this Address to the King. They do it, and make us the cat's foot. I would mend the Address, and send it to the Lords at a Conference.

Mr *Sackeverell*.] I do not approve of that, for several Reasons. Never since I sat here have I seen such a Precedent, that when either the Lords or Commons addressed the King separately, a Conference should arise upon it. Can the Lords alter their Address a second time? The Lords Precedents that come out of the ordinary course of Parliament, I shall never give countenance to make them good. Many things will arise upon this, if you go to Conference. I would rather lay this matter gently aside without doing any thing, and then try what power this House has by an humble Representation to

the *Meal-Tub Plot*. *Dangerfield* was upon that clapped up, and he soon after confessed how the whole matter was laid and managed. In which it is very probable he mixed much of his own invention with

truth, for he was a profligate liar. This was a great disgrace to the Popish Party, and the King suffered much by the countenance he had given it. *Burnet*.

his Majesty. If you address, it may be you will get no better Answer than the Lords have had. The way you took in Mr *Coleman's* case (when you had great dread of *Coleman*) was, you moved by Address to the King, "That if *Coleman* would make a discovery of what he knew, his Majesty would please to pardon him; and in case he would not discover, that his Majesty would please not to pardon him;" and the effects of that you saw. Unless you take that general way, the exceptions will be so numerous, that it may be you will have an Answer as displeasing to you as this to the Lords. See the former Precedents you have made use of, and limit your Address for Pardons, &c. to a time, which I take to be much the safer way.

Sir *Richard Temple*.] It is well observed, "That the Lords Address to the King, and his Majesty's Answer, are out of all method of Parliament." Both the Message and Answer are subject to exceptions. If you like it so, you may concur with the Lords; if not, you may mend it by an Address of your own.

Mr *Hampden*.] No doubt but the thing is irregular, but I see no doubt but that if you pass it by without Conference, it is a neglect from you: But I alter my opinion as to Conference. I know not how the Lords can make another Address. I would not have you make an Address barely for two months, &c. But if a man will come and give evidence satisfactory, he shall have the benefit of it.

Sir *Thomas Lee*.] The Lords moving the King, &c. by Address, will be the subject of the Debate at the Conference, and Gentlemen may have full instructions for that. I confess, the like was never known, that the Lords should address the King, &c. and receive an Answer, and then the Commons should be acquainted with it. But it is not now a time to pick quarrels with the Lords, therefore I move you to make an Address to the King, &c.

Sir *Francis Winnington*.] I find, a Conference with the Lords is not practicable. But for an Address to the King, if you fear that a Proclamation will come out up-
on

on the Lords Address, and that yours may come too late, I would therefore move you, to avoid difference with the Lords, and amongst ourselves, that some of the Privy Council would address the King from the House, that the Proclamation may be suspended till we may make such an Address as in good manners we can.

Mr *Garroway*.] I am not for making any difference or disturbance with the Lords, and yet not for doing less than to satisfy ourselves with the depth of the Plot. Order it so, that such discovery as shall be made to this House, shall have such Pardon as you shall address the King for. Put the power into your own hands so as you may address the King for Pardon, as such a discoverer shall deserve his Majesty's grace and favour.

Sir *John Knight*.] I move, that you would address the King to put such Papers of the discovery of the Plot into your hands as have been found since the last Parliament, and likewise those relating to the Plot in *Ireland*.

Sir *Henry Capel*.] Consider the King's Speech, to take care of the prosecution of the Plot. The King has joined the Lords and Commons together, therefore let us not divide ourselves from the Lords. The Lords can administer an Oath; we cannot; and consider that the Commons are the Prosecutors of the Plot, and the Lords are the Judges, and how the Lords come to be so forward in this Address, I know not.

Mr *Bennet*.] In Parliament it is a Plot, and out of Parliament it is none. We are now come into the Plot again, and I would have this Address for us, and as long as we shall sit. We do not at all injure the Lords, if we address the King, as we are the Prosecutors.

Ordered, That an humble Address be prepared, to be presented to his Majesty, for the Pardon of such persons who shall, within a limited time, make satisfactory discovery to this House of the horrid Popish Plot. [And a Committee was appointed accordingly.]

Lord *Russel*.] I have seriously considered the danger we are in from Popery. To make a long discourse of it

would be unnecessary, and we are in great danger too from conniving Protestants dismissing of Juries, when the matters relating to Popery are depending, and countenancing of abhorring Petitions. If there be so much favour and countenance showed to Popery by Men of Quality and Business, who make their court to the Heir presumptive, being a Papist, this Parliament must either destroy Popery, or they will destroy us; there is no middle way to be taken, no mincing the matter. New contrivances of Plots, and suborning Witnesses!—My humble Motion is, “That you will consider the danger we are in, and provide such effectual means to secure the Government and Religion, and quiet the just fears and apprehensions of the people, and provide against a Popish Succession.”

On Sir Samuel Barnardiston's Motion, Mr. Dangerfield was brought to the Bar, where he gave an account of the new sham Plot, as it is printed.

Sir Robert Peyton.] In this relation of Mr. Dangerfield I find myself named, and I am glad of it, that I have an occasion to give you a true relation. I was with the Duke of York upon this occasion. There was a Report, that I was one of the severest enemies against the Papists, and violent upon the Duke. Some time before my Election, I was at Mr. Gadberry's, who told me, “That I should receive great opposition from the Duke at my Election.” I said, “I mattered not that, as not in the Duke's power.” “But,” said Gadberry, “why are you so violent against the Duke?” Said I, “It was nothing but my Judgment, as it was the rest of the House.” This was a transient discourse only. About ten days after, Gadberry made me a visit, and since I saw him, I had been with some Persons of Quality, who told me, “That the Duke would not believe but that I had some personal enmity against him, unless I would tell the Duke the contrary myself.” I went out of town for some time, and at my return, Gadberry told me, that Lord Peterborough desired me to meet him at his house; where I did meet him, and
nothing

nothing passed more than discourses, "That I had no personal animosity to the Duke, but what fell from me in the last Parliament was my Judgment." Lord *Peterborough* said, "He would have me personally tell the Duke so, to undeceive the Duke." He brought me to the Duke, where nothing passed but compliments from the Duke, who said, "He would be my friend." Lord *Peterborough* said, "He was glad of the reconciliation, and that I should come again into the Commission of the Peace if I pleased." But I desired not to be troubled with it, and the Justices names that I gave in were not liked. Then Lord *Peterborough* asked me "What I thought the Parliament would do?" I replied, "They are a great body of wise men, and I know not what they will do." But says my Lord, "I hope you will be the Duke's friend." To which I said, "That according to the Justice of the matter propounded, I would give my Judgment." He said, "The Parliament would do well to accept the King's Proposition." Upon my honour, though I am charged with this Presbyterian Plot, I take God to witness, and let my limbs be torn from my body, before I would have had a hand in so dishonourable a thing. I have heard my name traduced, and therefore I thought fit to give you this account.

Colonel *Titus*.] *Peyton* has been detected to have been with the Duke of *York* at unseasonable hours; if he has no excuse to make for himself, he has a very poor invention. He came to *Gadberry*, with a cloak about his face, to enquire what would befall him in the forty-seventh year of his age. *Peyton*, by seeming to be at a wonderful distance from the King and Duke, has laid a trap, and gone about to blast Gentlemens reputations at Elections for Parliament-men, and I wonder how he can answer to himself, much less to the World, what he has done. I would have the Gentleman withdraw, and appoint a Committee to examine the matter against him. *Sir Robert Peyton withdrew.*

Debate on *Dangerfield's* Accusation of the Earl of *Anglesea*, &c. See the printed Narrative.

Lord *Annesley*.] Great discovery has been made by *Dangerfield* relating to great men. If my Lord Privy Seal (*Anglesea*) be guilty of what *Dangerfield* charges him with, I am sorry I am related to so ill a man. I hope I shall not suffer in the opinion of the House for my relation to him. I desire you may immediately go upon the accusation of these great men.

Sir *Henry Capel*.] I have sat here many years, and I find that every Session of Parliament we are still troubled with Popery. In the descent of four Kings, still the Parliaments have been troubled with Popery. Laws have been made against it, and all fail. Sometimes Popery is in the Ministers of State, and in another state too, the Clergy; and now, to our misfortune, we find it in the Heir presumptive of the Crown, and the son of that father who died a Martyr for the Protestant Religion. This Parliament is to consider, not only the preservation of the lives of the King and us, but the safety of all *Christendom*, and the safety of that part especially that is not willing to be under the *French* Government. Therefore let us turn over every stone—If no remedy will cure the sore to the bottom, it is strange. Complaints have been made of Invasion of our Properties, that they are not secure—Does that perfectly cure us?—Or Popery?—In the last Parliament we had a long Bill against it, but it had no success. Addresses to remove persons have troubled the House; but that will divide us, unless relative to the Plot; but if none of these will perfectly cure us, we must proceed to Popery. I have observed, that still, in War, or Peace, the intention of the Parliament has been subverted—You must root out Popery. We have seen War betwixt *England* and a Protestant Nation, which has cost blood on both sides. And we have seen the mighty King of *France* come full sail to be Arbitrator betwixt us. Whereas, in Queen *Elizabeth's* time, she would not suffer him to set out a cock-boat; and now he sends a Declaration

ration out, "That we were the aggressors, and he would side with *Holland*." We have seen the Triple Alliance, which, had it been kept, might have brought that King to the *Pyrenean* Treaty. And from what spring has all this come, but from Popery and *France*, and *France* and Popery? As formerly it did from *Spain*, when as formidable as now *France* is. Lately, the last Long Parliament would enter into a War with *France*; and when the Confederacy was made, then we were to draw the sword; and instead of that, we had a General Peace. Now after all this, would you have War as it has been already made, or Alliances, till you are upon a Protestant bottom? And the suppression of Popery will never be till then upon a strong bottom, and till you bring the King to be head of the Protestant Party; and even Catholic Princes would be glad of it. They else, unless they see that, will not join with us. I believe the King of *Spain* would be glad of it. When the Plot first broke out, I saw a little Book, wherein it was wished the King of *England* would send a good Protestant Ambassador into *Spain*, and not a man of divided principles. This being so, you must fall upon Popery. I remember, some time ago, when we were very zealous for the Church, and made Laws against the Quakers, and that the Non-conformist Ministers should not be suffered in Corporations: And what did all this? At the end of twelve years comes out the Declaration for Liberty, and did undo all that had been done; and at the tail of it was liberty for Popery, and two or three little men came into the Ministry, and put tricks upon us. But I must speak it to the honour of the Dissenters in that Parliament, (if there were any) that they all voted against the Declaration. What have not the Commons done to suppress Popery, and preserve Property? And yet they have the greatest breach of their liberties, their goods taken from them, and yet nothing like to the break of the Bank *. The spring of all these is from *France* and Popery, and nothing else. I should be glad

* Meaning the shutting up of the Exchequer.

to be rid of this thing, Popery, for another Reason: It has been buzzed about by ill men, "Let the King have a care of the Parliament; they will pull down the Crown." If Popery be but suppressed, none of these discourses dare be uttered. The Parliament brought in the King without blood—But of late, still we are told that the Church is in danger, and the actions of 1641 thrown amongst us. Another Reason: We should have no need of turning out Justices of the Peace and Deputy Lieutenants. We should have no need of suppressing Petitions for the sitting of the Parliament, for it is our liberty, (I bless myself that any man dares say the contrary) if it was not for Popery. The old *English* Government has been, to keep a good Correspondence betwixt the King and his people; the King living upon his Rents, and frequent Parliaments petitioning and offering the King presents; and the King had his subjects purses freely; and all this must naturally fall upon us, if we suppress Popery. Therefore I hope you will pass a Vote "To consider of the prevention of Popery, and a Popish Successor."

[*Sir Francis Winnington.*] I believe that all here are willing to lay the foundation of the Protestant Religion, and come here, not out of prejudice to any persons, but to mend things. No man that knows any thing, but might be large upon the growth of Popery; and I shall show you the progress the Papists have made, since the dissolution of the last Parliament, by the Conspirators. When the good Patriots in the Long Parliament were out-voted in many things, yet they kept up the Protestant Religion. No man before the unhappy Dissolution of the last Parliament but was afraid that the Plot would have undone us. The Plot was discovered before the Long Parliament was dissolved; but there was a fate in it. The zeal of the last Parliament was to prepare things for Tryal of the Conspirators, which had so many interruptions of formalities, and we know what broke off that Parliament—Those minute and little things, not worth naming—But when things came quick upon them, then it was imputed to us, that we were hot men—They would

would have us moderate, and yet they know not what that was. When we were dissolved, they proceeded to no less than the turning the cannon upon us in the Protestant Plot; but it was a devilish ridiculous one of so many Lords and Gentlemen in it; and as they that invented it knew it was not true, so Protestants believed it not. As soon as the Protestants saw this, they were thinking how to secure themselves from this Book in the Meal-Tub*. Things falling out thus, people knew not how to relieve themselves, so they go about to petition for the sitting of the Parliament—Papists were about town, and Protestants discouraged. So some make their Requests known in Grand Juries, and some in voluntary Petitions. Then comes out a Proclamation, and I am astonished who drew it. I believe that Mr *Langhorn*†, had he been Attorney General, would not have been so insolent as to have drawn it. The Proclamation calls these “disorderly Petitions, tending to sedition:” Good God! what a case are we in? Judges of great eminence and integrity, that countenanced Petitions, were turned out, but I find not one Justice of Peace, popishly affected, turned out. Only such who in intervals of Parliament were active against Popery—When I consider this, there was another turn; a sort of men called “Abhorrrers of petitioning for sitting of the Parliament.” In several Charges of the Judges this Petitioning was proved Rebellion. Some ill or ill-considering men were drawn to abhor; and I hope some black character will be put upon those men, for an example to others. I have seen in a *Gazette* where the Courts of Justice have declared their extrajudicial Proceedings against printing without Licence, upon the Statute of Libels. But that truth should be suppressed is a badge of slavery—That nothing should be printed—now you must not tell truth. The *King’s Bench* suppressed *Care’s*‡ “Weekly advice against Popery.” It seems, Popery

* See p. 354. Note.

† A notorious Papist, executed the year before.

‡ One *Care* was indicted for

printing a weekly intelligence called “The Pacquet of Advice from *Rome*, or the History of Popery.” This man had a strange

was very uneasy to them, and they made a Rule of Court, that that book against Popery must not be published *per aliquam personam quamcunque*; that is, "No man shall write against Popery." How come the Judges to make a Law? When the Parliament is dissolved, Petitions are condemned, Abhorrrers countenanced, and no man must write against Popery. When Grand Juries, who represent their Country, come, and their principal end is to suppress Popery, it fell out, that because there was a noise of some great men that were to be indicted for Popish Recusants, the Judges at the *King's Bench* dismiss them, and are resolved to let the Papists go*. If Judges will thus act against their Oaths, and you shall not enquire after it for the service of your Country, here is a cessation of Justice in dismissing Juries whilst Indictments are depending, and this makes an end of all. When we see such a coherence and conspiracy against us, we must be ruined. The King, in his Proclamation, has said, we shall meet and sit, and he apprehended himself as well as us in danger from these men. Therefore let us go on to enquire into these miscarriages. Have not massacres been begun here (though the Papists say they are lies) on Sir *Edmundbury Godfrey*, that knew something of the Plot which *Coleman* would not have him? For

knack of writing extraordinary well upon that subject, and the Paper was by most persons not only thought very ingenious, but also very useful at this time for the information of the people, because it laid open very intelligibly the errors and cheats of that Church. However, upon an Information given to the Court of *King's Bench* against this *Care*, this Rule was made; "*Ordinatum est quod liber intulatur* The Weekly Packet, &c. *non ulterius imprimatur vel publicetur per aliquam personam quamcunque. Per Cur.*" *Debates in the House of Commons for the year 1680.*

* Lord *Shaftesbury* engaged the Lords *Huntingdon*, *Grey of Werk*,

Russel, *Cavendish*, *Brandon*, Sir *Edward Hungerford*, Sir *Henry Calverly*, Sir *William Cowper*, Sir *Gilbert Gerard*, Sir *Scroop Howe*; *Thomas Thynne*, *Thomas Forester*, *John Trenchard*, and *Thomas Wharton*, Esquires, to go with him into *Westminster-Hall*, and there to the Grand Jury for *Middlesex* all of them in a body publicly presented Reasons for indicting the Duke of *York* as a Recusant. The immediate effect of this daring action was not so great as was expected; for while the Jury were yet deliberating on the Presentment, the Court had the address to send for them up and discharge them, *Ralph*.

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the honour of our Religion, I desire Justice may be done upon these men, though I hate cruelty, and though all the Protestants in *France* were once assassinated. As for the assault upon Mr *Arnold**, I look upon him as much killed for the Public, as *Godfrey* was. If this be true, I say that life is sweet and Religion dear : I would preserve that Religion that must give me comfort when I am dying. But I fear, when the Parliament is gone home, the same game will be played again. Therefore let us keep up ; and whereas the Papists say, this Parliament will alter the Government, whenever we once lay a foundation against this monster, Popery, the King and Kingdom will be glorious, our Civil Rights established, and we are slaves if they cease. If this be the case, pray put the Question for a Vote, “ That we will proceed to secure the Nation against Popery, and to prevent a Popish Successor ;” and if we do that, I hope the Protestant Religion will continue *so long as the Sun and Moon shall endure.*

Mr *Montagu*.] It will be a hard thing to say any thing after what has been so well debated. But out of duty and zeal to my Country, when so highly concerned, I shall presume to say, that if you please to look into the Court, the Council, the Country, *Westminster-Hall*, the Navy, the Forts, see who are preferred to Places, and by consequence who put them in ! This convinces me, that Popery must come in, unless these things be prevented. Therefore pray put the Question as it has been moved.

Resolved, Nemine contradicente, That it is the Opinion of this House, to proceed effectually to suppress Popery, and to prevent a Popish Successor.

[*Ordered,* That Mr *Dangerfield* do put his Evidence into writing, and deliver it to the House to-morrow morning †.]

* One Mr *Arnold*, Justice of the Peace in *Monmouthshire*, who had distinguished himself by his zeal against Popish Recusants, was, about the middle of *April* (1680) waylaid in *Bell-Yard, Fleet-Street*, by two persons in disguise, who gave him four or five wounds in his body, and

several cuts in his face, and, as it was given in evidence, would certainly have dispatched him, if it had not been for a pair of whalebone boddices, which, it seems, hindered the thrusts from being mortal. *Ralph.*

† See p. 358.

Wednesday,

Wednesday, October 27.

[Mr *Dangerfield*, according to Order, delivered his Evidence relating to the Plot in writing.]

Mr *Hyde*.] I was unwilling to interrupt the Question yesterday, of *Dangerfield* giving in his Narrative in writing. Though some may think hardly of me, yet I will venture my estate and life as far as any man, to prevent Popery, and a Popish Successor, if it will not bring us into a War. As for the Narrative that *Dangerfield* has given in, I cannot believe that Narrative. I will not insist upon an extraordinary act of the Council-Table upon Oath, but this Narrative is not upon Oath, that he feared to be crushed there, and therefore he had declared it here. Those that know him, take him to be a man not of such credit, to speak as he does of any man, much less of such a person as the Duke. As to the Duke's oaths and imprecations that he speaks of, I never heard such a word out of the Duke's mouth. But this invalidates his Testimony to me, that when he was examined at the Council, "Did you see such a person?" "No," says he, "never in my life;" and all upon his Oath; and then, "Yes, I think once, and never but once." These are not great matters, but this goes a great way with me, when in little matters he will trifle thus; and this is a man I cannot believe. What weight his Narrative will have with others I know not. This I speak in discharge of my conscience. Let us be angry with the Duke, but not with one another. I freely and calmly speak this, because yesterday there were wonderful reflections made on the Court and Council. Who put them there? Them they serve. I was put in by the King; I serve him, and none else. There has been ill conduct. Yet in compassion to us as men, consider calmly of *France* and Popery; and yet great measures of late have been to take the King out of *France* and to ally with *Spain*. Whilst I serve the King with honesty, let me serve with reputation.

Sir *Leoline Jenkins*, Secretary.] I would not have stood up about *Dangerfield*, but by reason some Gentlemen have

have laid some weight upon it. The credit of the man depends upon the Judges that must pass Judgment upon his Evidence, considering the circumstances of his life. He must be left upon the conscience of the Judge and Jury. But especially I take notice as if the Duke of *York* found fault with him for want of courage to kill the King. In conscience I am persuaded that no subject has a greater abhorrence of this fact than the Duke, and I wonder the Duke should not be detected before now. By my profession (a Civilian) I am acquainted with the Law of Nations, and no Nation will give credit to persons of this man's life. Let us be calm in our Debates, and let this Narrative have no more influence here, than it will in all other Nations.

Colonel *Birch*.] I stand up to make a short Motion. Let this Evidence of *Dangerfield's* be what it will, let the House make their use of it; and I move, that a Justice of Peace may take it upon Oath.

Sir *Francis Winnington*.] We cannot order a Justice to take it upon Oath, for we represent a Grand Jury, and we cannot order an Oath to be taken. Let us recommend it only to the Justices, as we did in the business of the Lords in the *Tower*.

Sir *John Knight*.] This time two years, you had several of *Coleman's* Letters, and of the Pope's Internuntio's, read here, and amongst other Letters, one did declare to take away the King's life, and that the Duke of *York's* affairs and the Catholics were all one; they were to act, and the Duke to stand still: But when the King should be taken off, then was the time for the Duke to act. This, the chief Letter, had miscarried, and the Committee of Secrecy never had it. In *August* last I was sent for by Mr *Bedlow*, who lay sick, and desired to speak with me*.

* The Judges were on their Circuits, and Sir *Francis North* had that of the *West* for his Province, when *Bedlow* took it into his head to ride post down to *Bristol*, where he fell immediately into a violent Fever, in which condition he lay, when the Lord Chief Justice made his first entrance into that Town to hold the Assize; and no sooner had his Lordship taken possession of his lodgings, but he received a Message from him by one Sir *John Knight*, desiring that his Lordship

I went to him with a friend, and on the 16th of *August* last; his words were these: "That he was in a dying condition, and was troubled that persons go about to make the people believe that there was no Plot, but he desired to clear his conscience now dying." He did now declare, "That whatever he had given in upon Oath, or declared against any person to be in the Plot, was but what is truth: That the Papists do still design to take away the King's life, and will never give over: That the King had been often told of it, but no care was taken of his life. Some of the Privy Council would needs have had him give his full Evidence, but he would not, for fear of being taken off." He desired that the Parliament might see Lord *Powis's* and Lord *Baltimore's* Letters of Correspondence in *Flanders* about the Plot. He said something against the Duke in Lord Chief Justice *North's* examination. He desired he would come to him that he might discharge his conscience before he died.

Serjeant *Maynard.*] I cannot doubt of the Popish Plot, since *Godfrey's* blood cries aloud in the land. When Doctor *Oates* gave in his Narrative, it was sent for to *St Omers*, and then they took pains to falsify it. This Narrative of *Dangerfield's* is no Evidence. When he gave Evidence against Mrs *Cellier* at the *King's-Bench*, it was not taken because he was attainted, and not pardoned. I speak not how he reflects on the Duke and the Earl of *Peterborough*. Let not the Narrative be entered upon your Books, but lie on the Table, and you will have farther Evidence. And I would ground no present opinion upon it. You may make use of it when you will. If upon Debate, the Question be put for publishing it, you will have no more Evidence. If the Question go for it, you are too soon. Though there is ground for you to accuse upon single Evidence, yet keep this Narrative in your hands for the present.

would give him a visit. His Lordship complied, but took with him several Attendants, and in the presence of all he declared, &c. and soon after departed to his Audit. *Ralph.*

Sir

Sir *Gilbert Gerrard*.] It is the Subjects Right to have liberty to petition the King. There are Precedents in Lord *Hobart*'s Reports of the Right of petitioning; and one of the great crimes of the *Spencers*, in *Edw. II*'s time, was "keeping Petitioners from the King." *Hen. VIII.* asked, "Why they entered into Rebellion, and did not petition him?" If that Right be denied, the people will have no recourse but to their swords. In 1640, the late King declared it to be the Subjects Right to petition, and invites them to it. I suppose you have heard of "Petitions," and "Abhorrences of Petitions*." I had the honour to present a Petition for the sitting of the Parliament, and presently followed the printed Precedents of Judgments against petitioning. Pray read that Petition, and the Precedents against it, and then you will see what we have done, and what the Long Robe have done, to betray our Liberties in the Right of petitioning. Whilst the Parliament is sitting, the King's life is safe, and those who advise the contrary would give him up. In the intervals of Parliament you have lost Mr *Bedlow*'s Evidence—If there be men who advise to dissolve and prorogue Parliaments, I hope the legislative Power will bring those men to Justice. I would have you assert your Right of petitioning what way you please.

Sir *Robert Howard*.] The King has sent out a Proclamation against petitioning†. When things are ill done, many men have the confidence to put them upon the King; so we scarce know who is guilty of them. Here is a Proclamation, and you are going directly to make a Vote against the King. Some of no knowledge in the Law advised the King to this. I suppose this Precedent against Petitions is a point of Law taken out of *Crooke*'s Reports, and made Law at the Council-Table; a Star-

* Lord *Shaftsbury* set on foot Petitions for a Parliament, in order to secure the King's Person and the Protestant Religion. These were carried about and signed in many places, notwithstanding the King set out a Proclamation against

them. Upon that, a set of Counter-Petitions was promoted by the Court, expressing "an abhorrence" of all seditious practices, and referring the time of calling a Parliament wholly to the King. *Burnet*.

† See the above Note.

Chamber-case, arisen not by argument before the Judges upon a cause started by the people of *England*: This is brought in for Law, and upon that the Proclamation is grounded. Saying prayers, and meeting together, at this rate, may be a riot towards Heaven. Plainly here is a thing given in for Law, therefore pray enquire who gave this advice.

Mr *Sacheverell*.] If any man makes a question whether petitioning be our Right or not, he makes a question whether we be freemen or not; a thing never doubted but by those Judges, who have declared it for Law (and I can prove it) that riots for the King's service are well done. This is *Scotch* Law, and every step we make tends that way; and so by Law we may be more under slavery than *France* itself. If the Judges shall have such power as to persuade the King to this, they are masters of the whole Government, and the King shall never know what is wrong, and consequently cannot do us right. Not to advise to call the Great Council together, when the Nation is in danger; and in the case of Lord *Danby's* Pardon, the Commons to be denied Justice when they desired it; when it cannot be denied to the meanest subject!—It is time to let the Judges know, that, if they will not do their duty, you will make them do their duty, and inform the King that they have not. I would therefore resolve, “That it is the undoubted Right of the Subject to petition the King to reform Grievances, and to address by Petition.”

Mr *Garroway*.] I was neither Petitioner, nor Abhorrer. I am neither for palliating the thing, nor putting it by. Put us a Question for this, and go on with the other in due time.

Resolved, Nemine contradicente, That it is, [and ever hath been,] the undoubted Right of the Subjects of *England*, to petition the King for the calling and sitting of Parliaments, and redressing of Grievances.

Mr *Hampden*.] A Vote of the House of Commons is no light thing, as in Alderman *Chambers's* Case of Tonnage and Poundage. The King, in his Letter to the
Conven-

Convention from *Breda*, said, "He looked upon the Parliament as the vital part of the Nation, and that it was not safe without it." We know the King's opinion already. I desire this may be added to your Vote, "That those who represent the respective Places who have petitioned, may give them the Thanks of the House for petitioning the King for the meeting of the Parliament."

Mr *Thynne* *.] It was the Bishop's influence which caused several to set their hands to the Petition of Abhorrency in the County of *Somerset*, and to give the King Thanks for the return of the Duke; which, in plain *English*, is to thank him for Popery. I would have these Abhorrrers declared Enemies to the King and Country.

Sir *William Portman*.] I was neither Petitioner nor Abhorrer. It was not the Gentlemen of *Somersetshire* that abhorred; it was only the Grand Jury.

Sir *Francis Winnington*.] You have asserted your Right: I would now enquire into offenders. Those who advised the King to issue out the Proclamation are Enemies to both King and Kingdom. A Gentleman of Quality to-day brought me a Paper of Exorbitances in the County of *Berks*, where the Petition was unanimously resolved on the Bench. *And reads the Order, viz.*

"Now this Court, considering that the way of petitioning the King for sitting of the Parliament is contrary to the King's Proclamation, and, as we humbly conceive, against his Prerogative, *Ordered*, That the Presentment aforesaid be obliterated and razed out of the Record of this Court."

So that when you pass that Vote, I shall propose how the Offenders may be brought to public Justice.

Resolved, Nemine contradicente, That to traduce such Petitioning as a violation of duty, and to represent it to his Majesty as tumultuous and seditious, is to betray the Liberty of the Sub-

* Son of Sir *Thomas Thynne*, and first cousin to the first Lord Viscount *Weymouth*, who inherited his large estate, he being barbarously shot in his coach in *Pallmall*, Feb. 12,

1682, by three assassins, at the instigation of Count *Coningmark*. He married the Countess Dowager of *Ogle* (afterwards Dutchess of *Somerset*.) *Hinc ille lachrymæ!*—

ject, and contributes to the design of subverting the ancient legal Constitution of this Kingdom, and introducing arbitrary Power.

Colonel *Titus*.] You are in the right in this Vote : Then those who have done against it are in the wrong. He that poisons me, or hinders me from an antidote, contributes to destroy me. Are we so great sinners that they will hinder us to pray ? But for those that should assert your liberties, to betray you ! If there be any amongst us that are loth we should sit, we may be loth too that they should sit amongst us. Let every such Member be heard in his Place, and then of right he may be heard at the Bar. If Sir *Francis Wythens* * be not in the House, pray send for him, that he may be heard in his Place.

[He was ordered to attend in his Place, the next day.]

Mr *Pilkington* delivered a Petition [of divers Citizens of *London*,] against Sir *George Jeffreys*†, Recorder of *London*, for threatening Petitioners and Jurors, &c.

Mr *Boscarwen*.] Whatever is said of this House by ill men, to divide the King and People, you have done well to declare your Opinion in it thus far ; and you may imagine something may be attempted again, like the Serpent to our first Parents in *Paradise*. They have made their Prince believe what never was true. The King's Prerogative, and the Subjects Privilege, is the greatest security of the Nation ; and when that is out of frame, the Government, like a clock, is useless. Some designs, I believe, will be on foot for separating us, as well as there were for preventing our meeting. What has else prevented the Tryal of the Lords in the *Tower*, but these Proceedings ? Therefore I would obviate this. This House is not a necessitous Body, but of sincere hearts ;

* Sir *Francis Wythens*, one of the Members for *Westminster* (and a Deputy Steward, who was knighted for presenting that Address) stood foremost on the List of " Abhorers," and therefore it was resolved to begin with him first.
Raph.

Mr *North* speaks of him as one of a moderate capacity in the Law, but a voluptuary ; and, as those commonly are, very timid, and, in great difficulties, abject.

† Afterwards Lord Chief Justice, Lord Chancellor, &c.

not upon self-gain, and interest, as formerly; therefore I would humbly represent to the King, "That we will go as far to support the Government as ever any House of Commons did;" and so make him confident of us. The King's Person, we see, is in danger, and the Protestant Religion; and there is no better way to obviate designs against him and the Government.

Lord *Cavendish*.] When I look a year and a half backward, I think this a happy day. The King has taken the last and only remedy, which is, to call a Parliament. Therefore I look upon the late Prorogations as the acts of ill Counsels, and our sitting as the King's own act. If it be true, that the King is still beset by those who inform him that this Parliament strikes at the Government, and would remove him next to his Brother, we should do well to confirm the King in his good resolutions, by some Address, "That the interest of this House is his, and that the sitting of the Parliament will make him a great King."

Sir *Richard Graham*.] I think you have been well moved. The eyes of *Europe* are upon the happiness or misery of this Parliament. The Nation also expects to be secured from Popery and arbitrary Government, and without it we know not how to go home into our Country. I am informed that the King is now advised to send the Parliament home—It is an observation, that States fall and rise as natural bodies, and that States have times to prevent their ruin; by such even steps Providence proceeds. We are in misfortunes, and may be saved, else we shall fall unpitied. (*The rest the Compiler could not bear.*)

Mr *Harbord*.] I hope there is God's Blessing for this Nation, or at least for the Protestant part of it, by the wise steps we shall take. But there is a sort of people who lay all the blame upon the King. You have a Petition against Sir *George Jeffreys*, for his arbitrary Proceedings in his place of Recorder of *London*; and lately at the *King's-Bench*, persons have been convicted of Perjury. It fell out that this Gentleman there did openly, when he

found himself charged there for taking these subornations, say, "That he sat up three or four nights at Lord *Danby's* lodgings, by the King's command." It has not been only the practice of this man, but of all the Benches where they have power. I speak it with horror, that they should father all these things upon the King. I doubt, when you come to pinch them, they will lay it upon the King. I have conversed with the King, and I doubt not of the least Injustice from him. Therefore I would add some Clause to the Vote, "That whoever shall lay any of these things upon the King, are enemies to the King and Kingdom."

Mr *Love*.] I was some years past in that Parliament (which, I thank God, we are rid of) where a man was still a Presbyterian, or this, or that, if he spoke plainly of Miscarriages. The Act, passed in that Parliament, for regulating Corporations, set us all together by the ears. These Petitioners in the City for the sitting of the Parliament were constrained, in some irregular way, to sign the Petition. Till a Common Hall was called, they could do nothing. Now, I thank God, we are in a Protestant Parliament, and both those of this or that persuasion will spend their blood for the Protestant Religion. The whole body of the City of *London* are of the same mind, and will join heart and hand with you, as these Gentlemen, that serve with me, will attest.

Sir *William Temple**.] The fate of all *Christendom* will be determined by the Session of this Parliament. And

* One of the most celebrated Statesmen and Writers of that time, Plenipotentiary at the Treaty of *Munster* in 1665, Negotiator of the Triple Alliance in 1667, and Ambassador to the States General in 1668. In 1673 he concluded the Peace with *Holland*, in 1674 he was sent again Ambassador to the *Hague*, and was afterwards one of the Mediators in the Treaty of *Nimeguen*. In 1679 he was recalled, and appointed one of the Privy Council, though afterwards, upon the

change of measures, and the freedom with which he delivered his opinion, his name was struck out. The rest of his life he lived retired at his seat in *Surry*, and died in 1692, aged 70. How loose soever Bishop *Burnet* represents his Principles to have been, yet there is no foundation for it in his Writings, among which, his excellent Letter to the Countess of *Effex* is a convincing proof both of his Piety and Eloquence.

unless

unless the affairs of the Protestants shall be especially supported by the King, ours at home will be in an ill condition. Nothing will support them so much, as that there is like to be union betwixt the King and his Parliament in what concerns us abroad as well as at home. (*The rest the Compiler could not hear.*)

Mr *Sacheverell*.] I cannot agree to the Motion of the Gentlemen who spoke last, though I cannot blame them for making the Motion. I have seen so much here, that I hope we shall go no more hoodwinked. We paid dear lately for an actual War with *France*, and that brought us a Peace. The King's Speech is to be well understood before we come to a Resolution. The King says, "He has made such Leagues with *Spain*, as he had made before with the *Dutch*." And that League, the late Long Parliament, as bad as it was, declared not satisfactory. Pray let us see this League, before that with an implicit faith we take it, whether it be for the interest of *England*. Will you leave it to the Ministers of State to judge, or yourselves? We have had enough of that already, and it may be, do the King more hurt than good with it. I remember Lord *Arlington*'s Answer here in the House, why the Parliament was not called to advise about the *Dutch* War. He told you, "There was Money in the Exchequer to carry on that War without aid from the Parliament, and, it may be, the Parliament would not like the War." But why has this Parliament been prorogued? If they disliked the Parliament, why did they call them again? It seems, there was like to be disturbances abroad, and now they call this because they want Money. This will be represented in the Country, that we pass Money to support Alliances that we thought dangerous. It terrified them whom we ought to have supported by that Peace, and are you doing the same thing again? State the Question for redressing disorders at home, before you leap into any thing abroad.

Mr *Powle*.] I shall appear to be as cautious of giving Money as any man, till that necessary time comes. Till then, I shall be as reserved as any man, as well to sup-

port the King at home as abroad. (*The rest the Compiler could not bear.*)

Mr *Hyde*.] I desire to rectify a mistake in *Sackeverell*. He tells you, "The King has made such an Alliance with *Spain* as he made with the States of *Holland*." That was not the Treaty. That in order to a General Peace was that Treaty, but the defensive Treaty is that which the King speaks of; the other is at an end.

Mr *Sackeverell*.] I observe that, in all these general Questions, Money is still at the bottom. You will find in that Vote the League offensive and defensive. But what Judgment can you pass upon a thing you never saw, by an implicit faith? We have sufficient testimony that the Ministers of State have not mended. I wish they may.

Mr *Garroway*.] I know no Treaty on foot, but with the King of *Spain*, and that is no support of the Protestant Religion. So far as you will stand by the King in the Government, I shall go along with you, but not "supporting with lives and fortunes," which we have been taken upon formerly when War or actual War, and all was actual Peace. As soon as they have got your Money, you may go home again, as you have done formerly.

Mr *Hampden*.] He has not an *English* heart that would not see the King great amongst his neighbours. Some things have been said that may justly give us jealousy, that were done in the Long Parliament. As for those Leagues, one was a prejudicial League, and the other was a trifling one. I would not deceive the King by my word nor reasonable expectation; if there be occasion for Money, we have nobody here that is to have any share of it, as formerly, when we durst not trust one another. Let us assure the King "that we will maintain his person and greatness," and leave the wording of the Address to the Committee that is to draw it, not by confining them only to the Debate.

Sir *Francis Winnington*.] I cannot blame Gentlemen that fear being bitten; but we have no biters in this Parliament. I believe there are several who carry it to the
King's

King's ear, that we are for our own good, and not his. Formerly they did give and take. This proposed is an implicit Vote. Pray let the Question be general, neither to seem to give, nor not to give.

Colonel *Titus*.] Pray consider what prejudice this may be to the Protestant Religion abroad, when it has been moved to support it, and you reject the Motion.

Which was added, &c.

Colonel *Birch*.] I have reason to believe, that those about the King do tell him that they who will take his Brother from him, will take him away too, and that you are against the Government. If these men have their ends, you are like to have another kind of Parliament than this. The Protestant Religion is in danger abroad; and he that sticks not to it abroad, cannot at home. Therefore I intreat that your Question may be such, as that the World may take notice that the King and Commons of *England* are one. It must appear from *Dan to Beersheba*, that men are put in trust that will stand to the Protestant Religion, and I am for the word "abroad" in the Question.

[*Resolved*, That an Address be made to his Majesty, declaring the Resolution of this House to preserve and support the King's Person and Government, and the Protestant Religion at home and abroad.

And a Committee was appointed to draw up the same.]

Thursday, October 28.

[Lord Chief Justice *North* gave Information, "That the Papers relating to Mr *Bedlow*'s Testimony, taken by his Lordship at *Bristol*, (*See p. 367. Note*) were by him delivered in to the Council, and by them transmitted to the House of Lords, and that one of the Clerks of that House was attending at the door with those Papers."

And his Lordship being withdrawn,] Mr *Brown*, Clerk of the House of Lords was, by Order, called in; and having delivered four Papers to the House, desired a Receipt for them, because he gave a Receipt for them to the Clerks of the Council.

[A Receipt was accordingly given by the Clerk of the House.]

Mr *Garroway*.] I would not read the Papers in my Lord Chief Justice's presence; but let them be showed him,

him, and ask him whether these be the original Papers, and all taken when he last examined Mr *Bedlow* at *Bristol*?

Mr *Sackeverell*.] There is a relation of *North's*, &c. given in to the Council-Table. Pray examine that also.

Lord Chief Justice *North* was called in, and, after his respects to the House, sat down in a Chair prepared for him within the Bar, the Serjeant with the Mace standing by him.

Then the Speaker interrogated him as to the examinations of Mr *Bedlow*.

Lord Chief Justice *North*.] I have viewed the Papers, and that first is a relation of the Business which I sent up to the Council, which I would not trust by the Post, because it was of consequence. I have recollected all the passages in the Paper. I cannot speak to a word, but to the best of my remembrance. These are all the passages I can recollect now; but, if any thing comes farther to my memory, I shall declare it. I believe the hand to be my Clerk's, who wrote it. When *Bedlow* had no more to say, I read it to him when the company was withdrawn. Every word that is written *Bedlow* did say, and it is all that he did say. There is not any thing with-held nor concealed. *He withdrew.*

The other Paper was a Letter from Sir *Leoline Jenkins*; for which see the Print, and the whole Account.

The Order was read for Sir *Francis Wythens* to answer in his Place*, &c. which he did thus:

Sir *Francis Wythens*.] I account it the greatest misfortune in the world that I am fallen into the displeasure of this illustrious Assembly. I am satisfied in my own conscience, that I intended no ill. I am a stranger to four parts in five of this House, and am fallen into the displeasure of those that know no good of me; and likewise it is the first time I ever appeared as a delinquent to excuse what I have done amiss. I do acknowledge it a great offence in delivering the Address to the King from the Grand Jury of *Westminster*, and I humbly confess I did not think fit to baffle here. I was Chairman at the Sessions, and the Justices made an Order, and agreed to it, and desired me to present it to the Jury. At the Justices request I did it, not as any voluntary act of

* See p. 372.

mine, but as theirs. I never was of any other opinion, but that it was most lawful for Subjects to petition the King, and to every man of common sense, who considers Sovereign and Subject, if he be not informed by Law, natural reason does make it lawful and necessary. I was offered a good Fee to be of Counsel for them, and refused it, not because I was the King's Counsel, for it was before that—Where great Wisdom is, there is Clemency, and as this House does observe the failings of persons, so it pardons them when not out of wilfulness but frailty. I had no base design in me. I am for the legal Government, and have been a Justice of Peace these three years, and have, with great earnestness, prosecuted the persons who would have destroyed the King and the Protestant Religion. I never laid my hand upon a Protestant of any persuasion. But when I consider the subject of Addresses, to stand by the King in the maintenance of the Protestant Religion—I cannot pretend—I have many failings, and though by this Vote you have made me so unfortunate as to be an Offender against it, yet I am glad all mens eyes are now opened, though by my extraordinary disrepute. I am an enemy to infallibility, and I cannot pretend to it. I humbly submit myself to you. Where so great Prudence is, there will be Clemency.

The Grand Jury of *Westminster* attended at the Bar, about the Petition of Abhorrence, &c.

Mr *Whitaker*.] I was employed in the prosecution for the Duke of *Buckingham*, in the subornation of perjury against him*. I had information that a Jury was packed, being of persons of no consideration. I had a copy of the names of the Grand Jury. I found a great many suspicious men; but finding three or four honest men, I made no great matter. But for fear afterwards that the three good men should be put out, and new ones sworn who had never any summons, by the means of *Wythens*, by which means I should have great difficulty to get the Bill of Perjury

* Colonel *Blood*, so famous for stealing the Crown, together with one *Christian*, a creature of Lord *Danby's*, and two more, were convicted of a Conspiracy against the

Duke of *Buckingham*, June 28; that is, to suborn two of his Grace's servants to swear against him a detestable crime. *Ralph*.

passed,

passed, by witnesses set up by Lord *Danby*—It seems, the Jury were not to the purpose of *Wythens*.

Mr *Harbord*.] Ever since King *James's* time, Popery has been increased when the Parliament has been dissolved, and suppressed whilst they have been sitting. Formerly, since the Statutes against Popery, due Returns were made into the Exchequer of Convictions of Papists, and the Crown has been the better for it; but it is not so now. But it is fit that those who give terror to the Government should bear the more charge towards it. But that you may proceed with more reputation, I would not go by this way of Narrative at the Bar. Therefore I move (though there be a sort of men who would cut people's throats and ruin our Religion) that you will appoint a Committee to receive Informations. If you try the Lords in the *Tower*, you cannot take Evidence here. I move not for a Secret Committee; they are like machinations of Statesmen. I would appoint twelve Gentlemen, and command them to attend that service.

Colonel *Birch*.] I am much of this Gentleman's mind, that a Secret Committee is not for your service. You may, in the House, take such as are near at hand, to give you Information.

Mr *Rowe*, Sword-bearer of *Bristol*, gave Information upon oath, before Sir *William Roberts*, against Sir *Robert Yeomans* [of *Bristol*, and against Sir *Robert Cann*, a Member of the House, "That they did, in *October* 1679, publicly declare, that there was no Popish Plot, but a Presbyterian Plot." The same was likewise attested by Sir *John Knight*, a Member.]

Sir *Robert Cann*.] A Jury of twelve men in *Bristol* will not give credit to Sir *John Knight's* testimony.

He made several imprecations, "that what was said against him by *Rowe* was not true," and swore "God damn him," &c.

Sir *Francis Winnington*.] I know not what credit *Knight* is of at *Bristol*, but I am sure no Member took more pains in the Committee for the Plot. *Cann* has made such vast imprecations of his innocence, as I have heard some bad men make when awed in Courts of Justice. That a man of so good credit in this House should be so reflected upon in *Bristol*, is strange!

Mr

Mr *Hampden*.] It is strange that the Corporation of *Bristol* should send *Knight* hither to serve in Parliament, and not believe his testimony ! This is a downright re- crimination. No man of the last Parliament but knows that *Knight* was as diligent and faithful, as equal and impartial, as any man, in the examination of the Plot. But at this time of day, when all the rage of the Papists is against you, a Member to be called all to naught, whose credit is so well known here ! No coherence can explain what *Cann* has said of *Knight*. A fine piece of wit to make this a fit discourse for this Place !

Sir *Christopher Musgrave*.] *Cann* knows best what he has to say in explanation of himself. I move only to Method. Though this be an extraordinary case, yet you must preserve the Methods of the House, of *Cann's* explaining himself in his Place.

Mr *Powle*.] The Reputation of *Knight* is so well known, that little need be said to it. He has contributed so much pains and sincerity in the management of *Coleman's* Letters, and to be chosen in several Parliaments for *Bristol*, that he should be now of so little Reputation here ! *Cann* compares his own credit with *Knight's*. The words are to be written down by the Clerk.

Mr *Strode*.] I heard *Cann* say, " God damn me, it is true !"

Colonel *Birch*.] Write that down, as an addition to what he said before. This execration is so like persons that decry the Plot, that this must not pass without remark.

Sir *Robert Cann*.] I humbly beg the pardon of the House for the rash words fallen from me. I do not use to swear. I abhor Popery. I never said the words. What I said was in passion, sincerely. *He withdrew.*

Mr *Boscarwen*.] Should you not do *Knight* right in this, you make the World believe something of this to be true. This is the greatest Reflection upon *Knight* that can be. *Cann* has imprecated extraordinarily, " That he did not say the words, That this was a Presbyterian Plot." Take this matter distinct from the former. Your
Reprimand

Reprimand ought not only to be for his rash imprecations, but for the abuse of *Knight*, your Member; else what will be said at *Bristol*; that you have only called *Cann* upon his knees at the Bar, and given him a Reprimand. Therefore I would have your Sentence distinct.

Mr *Love*.] *Knight* is a Merchant of *Bristol*, and a trading man of unquestionable Reputation at *Bristol*. He was Chairman to the Committee about the Plot. He took that pains that never man did in that Chair. I must give that testimony of him. The Letter he told you of yesterday, that is lost; his Reputation, if you vindicate him not, will be nothing, when he produces the copy of that Letter.

Sir *Thomas Clarges*.] The imprecation is so ill that he made, I desire not to remember it. All the excuse he makes, is, "That it was a rash word." I desire that his punishment may be in his purse, and commit him to the Serjeant.

Sir *John Hotbham*.] It is well known how much this Popish Plot has been decried. You turned out Mr *Sackville*, the last Parliament, for vilifying the King's Evidence, and speaking slightly of the Plot in Coffee-house talk. You have a Vote in your Books, "That this is a Popish Plot," and *Cann* was then a Member when that Vote was made, and when Mr *Sackville* had the Justice of the House; and now he to go about to traduce it, and lead about people with these idle stories! I would have many things printed, that spiritual men too may be informed of your Proceedings. If *Sackville* deserved to be turned out of the House, I desire that *Cann*, who has seen all the Evidence of this horrible Plot, and yet has traduced it, may not sit within these walls.

Sir *Francis Winnington*.] When *Cann*, at a public table at *Bristol*, shall be so frank as to declare this to be no Plot, I think him not fit to be here to suppress the Plot. Some men think, that if a man swears not, then he is presently a Fanatic. Therefore if *Cann* be of that opinion, and that this is no Popish Plot, but a Presbyterian,

byterian, he is not fit to sit here; and pray send him home.

Colonel *Titus*.] If this should be represented to Juries and Judges, that you countenance a person here, who has represented this to the World to be a sham Plot, and that both Juries and Judges have done wrong to the persons executed for the Plot, with what face can you go on in the prosecution of it? It is great injustice, if this be suffered, to go on with farther examinations. For a far less crime you expelled Mr *Sackville*, and I move you to expell *Cann*.

Serjeant *Maynard*.] You have two things before you: One is the offence of *Cann* committed in the House, his recriminating on your Member, and his impious execrations; and the other, his offence out of the House, in traducing the Popish Plot, by calling it a Presbyterian Plot. You are to give sentence upon both distinctly.

Sir Robert Cann being upon his knees, at the Bar, the Speaker thus gave Sentence.] Sir *Robert Cann*, you are guilty of a complicated crime, aggravated with circumstances. You have been a Member of three Parliaments, and it is expected you should know the Orders of the House. You have offended against Order, and the common respect of Society. You are a man of passion much above your understanding. You have reviled and scandalized your Fellow-Member and Neighbour, a man of worth and reputation, and when you come upon your defence of your Charge, in traducing the Plot, you recriminate. Every man is sensible of the danger of Popery, and you to speak those words of a Member that has so well served the Nation in the discovery of the Plot, a man of that integrity! The reflection is upon your own head. To use that imprecation of "God damn me, &c!" An Oath is so far from giving you credit in what you have said, that it justly renders it suspicious. Your punishment is made easy in only bringing you upon your knees for your offence in those vile words.

This was his first Sentence. He withdrew, and was called again to his Place.

The Speaker then asked him, What have you to say for yourself in publickly giving your opinion at Bristol, "That there was no Popish Plot, but a Presbyterian Plot?"

Sir Robert Cann.] I am as much against Popery as any man. Upon all the protestations I can make, I never said the words. I ever did, and ever shall believe this to be a Popish Plot, as sure as you are in the Chair. I humbly beg the pardon of the House, and am sorry I have given offence. He withdrew.

Mr Hampden.] Let us hear all the Evidence against him from Knight and the Sword-bearer of Bristol, and then you may judge.

Mr Rowe, the Sword-bearer, at the Bar.] At a Sessions-dinner at Bristol, October 7, where were the Bishop and Sir Robert Cann, Sir Robert Yeomans was talking, "That the Dissenters in Bristol, at the Election, gave their Votes for Knight." Yeomans said, "There was no Popish Plot," (speaking against the Dissenters.) Says Cann, "I am of Yeomans's opinion, that there is no Popish Plot, but a Presbyterian Plot." I heard Cann say it at another time. Cann took his measures from the Marquess of Worcester, who made it his whole business to make the Mayor believe it. And this they gave out at the Election of this Parliament; and by this sort of discourse they worked off abundance of voices from Knight. They have their great measures from my Lord of Worcester; he governs the City in all things. By that Lord's means, it has cost me 50*l.* upon an accusation before the Lords of the Council, and for what, I know not to this day— (*Here he was not suffered to go on, but was ordered to withdraw.*)*

Sir John Hotham.] You have heard all that Cann says, and it amounts to no more than a denial; so that you have nothing more to do, if you are satisfied with the Evidence, than to resolve how to proceed with Cann.

Colonel Titus.] Mr Sackville was a young Gentleman, and a Soldier; and it was a less offence in him that you expelled him for than in this man. Therefore that your

* Soon after created Duke of Beaufort, and against whom an Address was made by the House of

Commons, in 1680, as a man inclined to Popery.

Justice may be uniform, pray search the Journals how you proceeded in the case of *Sackville*.

Colonel *Birch*.] The case of *Sackville* was of a person that never was a Member of Parliament when he committed the offence. So this of *Cann* is not the same case.

Colonel *Titus*.] As *Cann*'s offence was greater than *Sackville*'s, so his punishment should at least be equal. You should send him to the *Tower*; which you cannot do when you have expelled him.

Resolved, That it doth appear, by Evidence, That Sir *Robert Cann* is guilty of publicly declaring, in the City of *Bristol*, in *October* 1679, "That there was no Popish Plot, but a Presbyterian Plot," and that he shall be sent to the Prison of the *Tower*, and be expelled the House.

Then the Speaker gave Sentence, viz.] Sir *Robert Cann*; Since you have been a trumpet, to proclaim the Popish Plot, no Plot of the Papists; being a Member of Parliament, and at a public time, and a public house; therefore the Sentence of this House is, That you be committed to the *Tower*, and you are actually cut off from being a Member of this House, and you are no more to be a Member of Parliament.

[*Ordered*, That Sir *Robert Yeomans* be sent for, in custody of the Serjeant, &c.]

Friday, October 29.

Justice *Newman*, and Justice *Robinson*, of *Westminster*, gave the House an account of Sir *Francis Wythens*'s management of the Petition of Abhorring, &c. from the Grand Jury of *Westminster*. The Justices did generally decline it.

Mr *Oates*.] Some few days after the Petition was presented to the King, I met with *Wythens* in the Council-Lobby, that day he was knighted. I told him, "I hoped to see him, and all others that abhorred petitioning for the sitting of Parliament, hanged, for all their knighthood." He replied, "That the King's Proclamation must be obeyed, and those that durst petition for sitting of the Parliament, he would bind to their good Behaviour." I believe there were near forty in the Lobby when he said it.

Mr *Papillon*.] It seems, by the Evidence, that the Clerk of the Peace moved the Justices to sign the Peti-

tion; and that Mr *Robinson*, and the rest, declined it. *Wythens* was a promoter and a setter of it on, and he moved the Justices, after dinner, to sign it; and knowing it to be against Law, and the subjects birth-right, and he, a man of Law, not to inform them, but to move the Justices to sign it!—I know not what more can be said.

Sir *Thomas Clarges*.] I would be careful, in what concerns a Member, not to proceed hastily nor arbitrarily. You have heard *Wythens* speak in his Place, and you are not yet ripe upon a general Information to give an opinion, which no Court can give Judgment upon. I would refer it to a Committee, that they may go upon it, to examine the matter, and have it reported, that we may have something on our Books to justify what we shall do.

Mr *Bennet*.] The thing is notorious upon Evidence; and you must not expect that Justices of the Peace, some of whom live upon the profit of Warrants, will speak plain. They will mince the matter. You have heard two Witnesses, *Robinson* and *Oates*; you need not call them again.

Sir *Francis Wythens*.] It will be a hard thing for me to recollect the Evidence, especially in the confusion I am in. I humbly request the House, that I may have the Accusation in writing, for my memory will not serve me to give an Answer to it at the present.

The Speaker.] You have liberty to make your Defence, and you have heard your Charge.

Sir *Philip Musgrave*.] I desire that your Member may have liberty of Counsel, to be heard at the Bar in his Defence. When a Gentleman is to receive Judgment, he should have liberty, at the Bar, to make his Defence; which if he cannot do, I shall be as forward to give Judgment against him, as any man.

The Speaker.] It is disorderly to give him his Charge in writing; but you may give him time to recollect himself, if you please.

Sir *Francis Wythens* withdrew during the Debate.

The

The Vote of the House was read, about petitioning, &c. *which see, p. 370.*

Mr *Harbord.*] Next to Popery, this matter of petitioning is the greatest point. How will you come to have Parliaments sit, when, it may be, those about the King, of bigger bulk than this Gentleman, behind the curtain persuade the King, that these Petitions are tumultuous and seditious? This Gentleman is Deputy Steward of *Westminster*, a standing Place in the Sessions, where he presides and gives Rules; so that here is nothing but appointing a number to petition (as we see.) What pity had the Judges on men, when a man was fined 50*l.* for but saying, "he might petition?" The whole Law is subverted by this. Judges may make, at this rate, throwing a stone over a wall, and by chance killing a man, murder. *Reading* was brought to our Bar; you may remember upon what occasion. He was sentenced, by the Judges, to the Pillory, and fined; he never paid his Fine, and yet he goes abroad. Mr *Tasburrow* and Mrs *Price* pardoned their Fines. *Harris* the Bookseller was set in the Pillory, and Mrs *Cellier* but upon the Pillory. We are come to that pass, that, in plain *English*, Protestants are punished, and Papists excused. When we consider what a Grand Jury it was that presented this Petition of abhorring, and that a company of beggarly Lawyers do these practices! *Wythens* was Judge of this Court, and has, in his Place, declared his opinion against petitioning for sitting of the Parliament. You did justice yesterday upon Sir *Robert Cann*; but what *Wythens* has done, was in the face of a Court, at *Westminster* Sessions. You will have no way to come by sitting of Parliaments, unless you make some examples; and I would have you make this man one, and turn him out of the House.

Mr *Boscarwen.*] The Question is, Whether you are yet ripe for Judgment upon this person? For justice sake, I would not precipitate it, but give him time to make his Defence; not that I believe the House will alter their Judgment of the crime. Some Judgments of late, in

the Courts of *Westminster*, have been almost like Star-Chamber Sentences, which I hope in time you will take notice of.

Mr *Papillon*.] What is this Gentleman's crime? It is betraying the Liberties of the Subjects of *England*, by petitioning to subvert the Rights of the Subjects. He has confessed it, and can bring no witnesses. The thing is plain before you for Judgment. The main crime he has confessed, of hindering these Petitions, &c. contrary to the Liberty of the Subject, and their common natural Right. Will you give him time to prove any thing against his own Confession?

Colonel *Birch*.] I am afraid, that in so much zeal we may make a bad Precedent. It may be, hereafter, Gentlemen may desire to have time granted them, and be denied it, if matters should turn.

Mr *Garroway*.] Will you give him time to prove what he has confessed? If he can bring witnesses to disprove that, you may then give him time.

Sir *Francis Winnington*.] I am sorry for the misfortune of this Gentleman of my own profession: But that our Debates may not dwindle away in circumstances, I cannot sit still. It seems to some Gentlemen a hard thing, not to allow one of your Members time to answer an Accusation, as you allow other men. This case is of two parts: One, of matter of fact, which he has confessed, and yesterday acknowledged himself guilty of your Vote, and was unfortunate: So that what relates to what he has confessed, cannot be heard again; that is ridiculous. Now whether that which he has confessed be sufficient for you to give Judgment upon, is the matter before you. Your time is precious, and danger great. There needs no farther Debate upon what he has confessed, and so much as to put a man under a great shock. He says, "He is not so composed in mind as to carry in memory what was said." But here is the case: If the House will not go upon his Confession, it is a strange thing not to give him to a day. It is said, "That the proofs are at the door." If you will go upon his Confession,

feſſion, it is one thing; but if you will hear farther proofs, and allow him to make his Defence, if there be more Witneſſes at the door, you cannot deny hearing them.

Sir *Francis Wythens* was called to his Place, where he waved farther time.

The Witneſſes were called in.

Mr *Aaron Smith*.] What I heard *Wythens* ſay, was after the Abhorring Petition. At the *Rainbow* Coffee-houſe he did declare, “That petitioning for ſitting of the Parliament was the ſeed and ſpawn of Rebellion, and the Principles of 1641: That none do preſume to petition that are loyal Subjects: And that none durſt, nor ought to petition, when the King had ſignified his pleaſure againſt it, by his Proclamation.”

Sir Francis Wythens's laſt Defence.] Firſt, I give the Houſe humble thanks for their fair hearing me. I muſt acknowlege, that I have been uſed with all candid proceeding. For what I am accuſed of here, there is but one ſingle teſtimony. As for what is ſaid by Mr *Robiſon*; he was the man that did propoſe this Addreſs to me firſt. It is a hard thing for me, in my own caſe only, to give teſtimony. I deſire the Houſe will conſider another thing: Juſtice *Newman* teſtifies he heard no ſuch propoſal from me; and I hope that may be ſome confirmation of what I ſay. If there be any truth in me, I never propoſed any ſuch thing as this Addreſs. I neither forwarded it any more, nor was more induſtrious in it, than in other things. I thanked the Grand Jury for the pains they had taken, as uſually the courſe is, in relation to their Bills, and upon no other account; and I ſaid, “I would faithfully deliver the Addreſs to the King.” I neither commended nor diſcommended it, but took it as it was. As for what Mr *Oates* ſays, that I ſhould ſay in the Lobby, I have recollected myſelf. He comes up to me, and ſays, “You have a precious Grand Jury at *Weſtminſter*: They are a company of rogues, and I hope one day to ſee them all hanged.” I ſaid, “They were an able Jury, and worth fixty thouſand pounds amongſt them.” In my whole life I never promoted any thing of this nature; and if I had been ſo mighty violent a man,

I should have done something to have promoted this. (This illustrious Assembly may confound a man in what he has to say.) I confess, I might have said to the Grand Jury, "That this is not a good way;" and I was to blame that I did not; and I am now much more convinced of my error in this place, where I have heard things debated with such calmness and moderation. I have no more to say, but humbly to submit to the determination of the House. I have to do with Persons of Honour and Judgment. I know not that I have given any disgust to any person of any profession whatsoever. I make my humble submission to this House, which I must ever honour, where I have had all the favourable hearing I could desire—I desire one word more: I am so far from knowing *Smith* (who testified against me) that I never saw him. No man goes so seldom to Coffee-houses as myself, and there I scarce speak one word. I do not remember any such discourse with *Smith*, or any man else. I would confess it, if true; and it is not worth my while to deny it. I never received any letter for putting in or out of Jurymen, I speak it in the presence of God; and so I leave myself to the mercy of this House; they are great and good. *He withdrew.*

Sir *Gilbert Gerrard*.] This Gentleman is that unfortunate man that led the dance in these Addresses for other parts of the Kingdom. I hope they are Protestants that made these Addresses, but they have kept too great a distance from them. As for this Gentleman, there is a necessity that you should do Justice upon him. I am sorry this Gentleman should fall under these misfortunes, but if this thing be not punished, you will make people bold and confident. I shall conclude with this Motion, "That this Gentleman be excluded this House, for betraying the Rights and Liberties of this House."

Sir *Thomas Player*.] If this doctrine be preached, "That petitioning for sitting of the Parliament is like 1641," what will become of us that made the Vote the other day, "That it is the People's Right to petition
for

for sitting of the Parliament, &c.?" And I second the Motion for expelling this Gentleman the House.

Resolved, That Sir *Francis Wythens*, by promoting and presenting to his Majesty an Address, expressing an Abhorrency to petition his Majesty for the calling and sitting of Parliaments, hath betrayed the undoubted Rights of the Subjects of *England*.

Ordered, That Sir *Francis Wythens* be expelled the House for this high Crime, [and that he do receive his Sentence at the Bar, upon his knees, from the Speaker.]

The Speaker thus gave Sentence of Expulsion.] This is a great Crime, committed by you, a Member of Parliament, against the Parliament; a Crime against known Law! And you being a Lawyer have offended against your own profession. You have offended against yourself, your own Liberty, your own Right as an *Englishman*. This is not only a Crime against the living, but a Crime against those unborn. I know your sense of honour, that you cannot but receive this Sentence with apprehension, which I am to pronounce against you; which is, that you are dismembered from this Body.

Saturday, October 30.

Signior *Francisco de Faria**, being called in, gave his Evidence at the Bar concerning the Popish Plot.

Lord *Russel*.] I think you have made a good Vote to proceed in the examination of the Plot. Now whether will you set a day to consider of suppression of Popery, and preventing a Popish Successor? Let us do it for the King's sake as well as our own. Neither the King's Person can be safe, the Government, nor the Protestant Religion, till the contrivers of the Plot be brought to condign punishment. I would declare, therefore, "That you will proceed against all that have had a hand in the Plot;" and I desire you would appoint a Committee to inspect the condition of the Plot, and the Evidence, how it was left in the last Parliament.

* This *de Faria* came in as a sort of Plot Evidence, and said "he had been frequently tempted by his Patron, the *Portuguese* Ambassador, with the offer of a great reward, to kill *Oates*, *Bedlow*, and Lord *Shaftesbury*." *Ralph*. See the next Note.

Sir *Henry Capel.*] The Motion is good, and I believe will take up no great Debate. We are all sensible how long the Prosecution of the Plot has been depending, now two Parliaments. We are not to forget our Vote of Popery, and a Popish Successor. I would therefore proceed to the full examination of the Plot, and appoint a Committee for it.

Sir *Francis Winnington.*] I need not stand up to give Reasons why you should proceed to this Question. But I stand up for Instructions to your Committee. Therefore, as you have done your duty to make those Votes, which comfort the hearts of Protestants, yet you had so much business on foot, and so many good Motions were then made, that they were not denied, but you could not go through with them. Now the Plot still goes on, for if Gentlemen in the Country are not favourable to Papists, they are in danger of their lives. The last Parliament, the Master of the Rolls moved, as a parliamentary thing, "That the Journals should be viewed, to see what you had left undone the last Parliament." I conceive, by the proposal of this Question, that the House is fully convinced to proceed to prepare things to bring these persons to Judgment. There was an Order of the House to enter Mr *Treby's* Report into the Journal. In a few days he may make that Report, that the World may see that you do not only vote, but will do also.

Mr *Hampden.*] There is no doubt, besides the necessity of affairs, and the King's recommendation in his Speech, to prosecute the Plot, that you owe it to public Justice, not to let men lye two years in the *Tower*. Pray hold to this Resolve, "That the House will proceed to the full examination of the Plot, in order to bring the Offenders to public Justice."

Which was accordingly voted.

Colonel *Titus.*] When any thing disgusts those who would not have Parliaments, I cannot blame them for "abhorring," &c. were I in their circumstances. But when the World shall see Parliaments go on where they left off, it will put them by that way of proceeding. Therefore

fore I desire that the Journals of the two last Parliaments may be inspected.

[A Committee was appointed accordingly.]

Francisco de Faria was heard, upon his own desire, as to the Tryal of *Sir George Wakeman*, relating to Lord Chief Justice *Scroggs's* deportment, &c.*

Monday, November 1.

Sir Richard Graham.] This Case of *Sir Thomas Malverer*† is different from other Gentlemen in *Yorkshire*. There is nothing of "abhorring" in it. Only "that they did not agree to the Petition for sitting of the Parliament at the Sessions."

Mr Hampden.] To refer a Member accused criminally to a Committee, I believe is not orderly. But pray let the Committee see what formerly has been done in the like case, and you will be better informed how to proceed in this.

Sir Francis Winnington.] I have heard that you will not endure any private information, but you subject the matter to be brought into the House. After you had heard *Sir Robert Peyton* here, you sent it to a Committee; which makes a distinction. I look upon this to be as hard a matter as can come before you. Let your Member be

* The next day after the acquittal of *Sir George Wakeman*, &c. the *Portuguese* Ambassador made an indiscreet visit of ceremony to the Lord Chief Justice (*Burnet* says, "he went with great state to thank him for his behaviour in this Tryal.") This exposed him to much censure, though, according to the Information given to the House of Commons by [the above mentioned] *Francisco de Faria* (who was the Ambassador's Interpreter) no more passed between them than this: "I am come (says his Excellency) to visit you, as you are a Minister of State, and am sent as Ambassador from the Prince of *Portugal* to the King of *Great Britain*, and am di-

rected to visit you, and likewise to thank you for the justice you have done yesterday to *Sir George Wakeman*." To which the Chief Justice replied, "I am pleased to do justice, and will not be curbed by the vulgar, and so I thank your Prince and yourself for the great honour you have done me." *Ralph.*

† He, together with Lord *Paston*, *Sir Bryan Stapylton*, *Mr Taylor*, and *Mr Turner*, all Members, had discouraged petitioning his Majesty, &c. and had made Addresses expressing their dislike of such Petitions. Of this, Report was this day made from the Committee.

charged

charged here, and haply then your Member may give you satisfaction in his Place.

Colonel *Birch*.] My opinion is, that this is somewhat of a ticklish business. Things cannot originally arise against a Member at a Committee; they cannot send for him; the thing must be reported to you. The thing of Sir *John Robinson's* accusation arose here, and when he denied it, and it was confirmed, you referred it to a Committee to examine. The Committee has done no more than reported to you something they have been informed of, and so your Member is to be heard here. Order your Committee to read the Vote of Abhorring.

Mr *Powle*.] It is the regular way, to desire the Reporter to tell you what Information he has against your Member, and then to appoint Evidence to be heard at the Bar, and then your Member to be heard.

Mr *Trenchard*.] I had no direction from the Committee to give Information to the House of the Evidence.

Mr *Garroway*.] You may easily proceed to this business. If there be a Charge, do your Member that Right as to hear him, which you never deny. Here is no Charge from your Committee, and you cannot proceed here.

Mr *Seymour*.] I do not apprehend that you are possessed of any thing, in the nature of a Charge against your Member. The matter was referred to a Committee, and if they find any thing which may concern your Member, then it is time for you to call the person to answer, and in his Place, when in the nature of a Charge; and then it is time for you to censure, or for him to require a copy of his Charge.

Colonel *Titus*.] You are put regularly by *Seymour*. What, should the Gentleman stand up to answer an Accusation not yet made? Therefore it is regular for you to order your Committee to-morrow to tell you the Member's Charge, and the Information against him.

[*Ordered*, That the Committee do receive Informations, &c. against Members, &c. and report the same to the House.]

Tuesday,

Tuesday, November 2.

Mr *Sacheverell*.] I attended the Secret Committee the last Parliament, and I find that a very great deal of the Evidence reported was omitted formerly, and never brought to the Committee of Secrecy. I would instruct the Committee that all the Evidence may punctually be brought before you, that there may be no disputes betwixt the Lords and us. I remember, the last Parliament, for a fortnight together every day we pressed the Lords at a Committee to one point, and could have no Resolution from them. Therefore I press it, lest it should be too late, and out of your power.

Sir *Francis Winnington* reads the Order, viz. "To inspect the Lords Journal, and report their Lordships Proceedings relating to the Plot." And I have reported all.

Mr *Sacheverell*.] There is one particular which is not reported. The Lords in the *Tower* put in a special Plea to their Charge, and that was reported by the Lords, and ordered special.

Mr *Treby* reports *Coleman's* Letters, &c. as in the former Parliament. (See p. 237.)

Lord *Russel*.] There was a Motion made the last Parliament, and turned into a Vote, (it is fit to know who are enemies to the King and the Protestant Religion now, as well as then,) and you did then resolve, "That the Duke of *York* being a Papist, and the hopes of his coming such to the Crown, hath given the greatest countenance and encouragement to the present Designs and Conspiracies of the Papists against the King and the Protestant Religion." I move therefore that you will vote the same thing now.

Colonel *Titus*.] Pray see in the Journals what that Vote was.

The same Vote passed, *Nemine contradicente*. (See p. 150.)

Mr *Booth* moves to have the Vote read of the last Parliament, for preservation of the King's Person, and that, should his Majesty come to a violent death, they would revenge it to the utmost upon the Papists.

[The same Vote passed, *Nemine contradicente*. See p. 260.]

Sir

Siir *Nicholas Carew*.] I think all is at stake, and as you have voted this, pray now go into a Grand Committee to consider of a Bill to prevent Popery, and a Popish Successor.

Mr *Dubois*.] Seeing the House is thus unanimous, pray let us consider what this Plot was to do. It was to destroy the King, and the Protestant Religion, and I hope I shall have such a veneration for the Protestant Religion, as not to let it be lost to me nor my posterity. I have a great many children. Some are old enough to understand Religion, and others that understand not their right hand from their left in Religion. I would have their souls saved, that hereafter they may not be in Popery, which we shall be with a Popish Successor. If the Catholics have such an influence upon the Government under a Protestant Prince, what will they have under a Popish? Therefore I move, that you will take some course to prevent a Popish Successor.

Mr *Harbord*.] I observe, that much more time is spent at a Grand Committee, than in the House. You may resolve what you intend in a few words. I would have the Vote read for suppression of Popery, and the danger of a Popish Successor, &c. I would be guided likewise by the King's Speech. Till you have gone through the Plot, I am sure neither the King nor Kingdom can be safe. By the Report you have heard of *Coleman's* Letters, you see who has managed the matter. I am satisfied, that as long as the Duke has any prospect left of coming to the Crown, the King cannot be safe. So long as *Mary* Queen of *Scots* was alive, Queen *Elizabeth* was neither safe in her Person nor Government. But if the Duke of *York* be not a Papist, yet, for tampering in cutting off the Person of the King, he deserves to be put by the Succession of the Crown; and I believe what *Dangerfield* has said, though a Gentleman told you he believes him not, as the thing is bound up with so many circumstances; and by *Dugdale's* * Information it plainly appears there was a

* One *Dugdale*, who had been Lord *Aston's* Bailiff, and lived in a fair Reputation in the Country, was put in Prison for refusing the

Oaths of Allegiance and Supremacy. He did then, with many imprecations on himself, deny that he knew of any Plot; but afterwards

proposition to destroy the King, as probably the King might out-live the Duke, and so the Protestant Religion might remain—And the King, in his Speech, bids us look to the prosecution of the Plot, that he and the Kingdom might be safe. This being considered, you have reason for your Vote. I appeal to you, whether, since the King came in, our misery, directly or collaterally, has not arisen from the Duke? My trust is here for the People and the State, and I have no gratitude to pay the Duke. The King is his Sovereign Lord as well as mine, and I appeal whether it was not for the Duke's sake that this wife was procured for the King? A great part of the World thought her incapable of children; but such was the authority of some people then, that they laid this as a foundation for the Duke to succeed. In short, from thence we may derive our woes. Let us see what the Nation has done for him contrary to all Precedents. At *Oxford* a hundred and twenty thousand pound was given to the Duke for his good service at sea. And after you had stigmatized persons in Parliament, they were taken into his service. Two persons were raised by him. Lord *Clifford* was introduced, supported, upheld, and maintained by the Duke. Popery and Arbitrary Power have attended things for these several years last past. I shall never forget how the *English* were sacrificed at the fight with the *Dutch* at *Solebay*. To preserve the *French* King's Subjects, the *English* were exposed, and Foreigners saved. Lord *Sandwich* was forced to command the Blue Squadron, and to give precedency to the White Flag of

he made a great discovery of a correspondence that *Evers*, Lord *Aston's* Jesuit, held with the Jesuits in *London*, who had writ to *Evers* of the design of killing the King, and desired him to find out men proper for executing it, whether they were Gentlemen or not. This, he swore, was writ plain in a Letter from *Whitebread*, the Provincial, directed to himself: But he knew it was meant for *Evers*. *Evers* and *Govan*, another Jesuit, pressed this

Dugdale to undertake it: They promised he should be canonized for it, and Lord *Stafford* offered him 500*l.* if he would set about it. He was a man of sense and temper, and behaved himself decently, and had somewhat in his air and deportment that disposed people to believe him. So that the King himself began to think there was somewhat in the Plot, though he had very little regard either to *Oates* or *Bedlow*. *Burnet*.

France.

France. When they thought they had made a mistake; and the *English* were exposed, three or four of the *French* ships fought, and they were turned out of their places for it when they came home. And when that villain Sir *Joseph Jordan* betrayed the Fleet, the Duke got him a Pension. And who commanded this Fleet we all know. I must say, that it is my opinion, that till the Papists see that the Duke cannot be King, the King's life will be in danger. Therefore I move for a Bill to exclude the Duke from the Succession.

Mr *Garroway*.] I agreed in the Vote you have passed, but I do not agree in all things which *Harbord* has said. We are not upon such a fatal step, as without consideration to pass such a Vote as he moves for. I move, not to wave any thing that shall be offered for preservation of the Protestant Religion for posterity, but I would not have this great matter moved run up suddenly, without thinking well upon it. Therefore I am for going into a Grand Committee, to consider of ways for the preservation of the King's Person and the Protestant Religion, before we come to this last remedy; and whenever we come to it, that it may be obligatory. Possibly we may be of opinion that some remedy may be without this Exclusion; like the leaving a General without an Army, you may make the Duke a Noun-substantive. The Papists, or we, (I plainly see) must go, either they or we hereafter. If you will, think of a Bill of Conviction of all Recusants, and then give them liberty to sell their Estates and be gone; for they or we, I say, must go, first or last; and then, that they may have you at hand, let something be provided that a Parliament may be called frequently. In a free Debate at a Grand Committee, these and other things may be offered.

Sir *Henry Capel*.] I agree with *Garroway*, that the matter is of great consequence, and ought to be well debated before resolved. Every man knows what obligations I have to that great Person the Duke; but when I come here, I leave behind me all private considerations of relation or obligation. You have had two Motions; one "for bringing in

in a Bill for excluding the Duke, &c. from the Succession of the Crown :” The other, “ for going into a Grand Committee to consider of Expedients to preserve the King’s Person and the Protestant Religion.” It often happens, that if a thing be ripe, referring it to a Committee proves dangerous. It was said, the other day, “ That it is great wisdom to go in former steps.” That, I confess, corroborates me in the opinion of not going now into a Grand Committee. For I remember, some few days after this Report was made, the last Parliament, of Mr *Coleman’s* Letters, you ordered a Bill to be brought in for excluding the Duke, and that Bill was read presently without going into a Grand Committee. I move therefore “ That a Bill may be brought in to exclude the Duke.”

Mr *Boscarwen*.] How often I have been for Expedients and Moderation it is well known. But we are now come to that pass, that we must be either Papists or Protestants, one or other, and I see no Expedient in the case. We know, when the Bill of Exclusion, &c. was brought in, the last Parliament, it was of no long extent, and has the first, second, and third reading, and Gentlemen may offer Provisoës if they please. But why should we go back to a Committee after a Report made of the Letters, &c. and the Votes you have passed? Why we should go shorter than in the last Parliament, I know not any reason. Therefore I move for the Bill, &c.

Sir *Francis Winnington*.] Our difference, I find, is by notions only; to the manner, and not the thing. I would not vote one thing one day, and throw it down another. In our Vote the other day, about a Popish Successor, &c. I did understand that the House was unanimous, and did think, that a person of the Duke’s principles was not fit to come to the Crown, to destroy us (and it was the sense of that Vote.) When I speak of this great Prince, whom I have a great respect for, and had once a relation to, I do it with great reluctance. I supposed it the true intent of the House, by that Vote, that you would not have a Popish Successor to the Crown; and if that was the meaning of it, then your Debate will
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be short, viz. Whether you will order a Bill to be brought in for that purpose, or whether you will go into a Grand Committee to consider of the means of preserving the King's Person and the Protestant Religion. You have made steady Motions and Gradations for this Bill already, and if your meaning is to debate over again your *Thursday's* Vote, that is irregular. If any man will stand up and say, "That the Duke is not a Papist," it will be a great comfort to us all here, and to all *England*. But the Duke's being a Papist, and the hopes of his coming such to the Crown, is the occasion of all our misfortunes, &c. Then it is no longer a doubt whether the Duke be a Papist, though not convicted in *Westminster-Hall*. It is painful to me when I speak of this great Prince, but there are degrees in things, and as my bowels yearn towards him, so they do likewise towards my wife and children. Seeing then that this Vote is already passed, and that the Nation is in expectation from us for their security, and that I converse with men of consideration, you have put another kind of consideration into them. Pray do not throw out what you have already voted.

Col. *Titus*.] No man rises with more unwillingness to speak at this time than myself; but all is now at stake, and I am come hither to do my duty, and to speak plain. Was there any place left for Moderation or Expedient, I would run into it. To act moderately, that is, to act with reason immoderately, is with passion. No man advises you to love your wife and children moderately, or to serve God moderately. One on the highway advises me to "ride moderately, or I shall tire my horse, or break my neck;" and it is good advice. But when thieves pursue me, to advise me to ride moderately, is to have me knocked on the head, and lose my purse. A ship captain, who had sprung a leak in his ship, advised his men to pump moderately for fear of calentures; but the men pumped on, and saved the ship. But for whom do we urge this Moderation? Is it for one to expect Moderation again? For our Souls, we are Heretics, they will burn us, and damn us. For our Estates, they will take our
lands

lands, and put Monks and Fryars upon them. Our Wives and Children must beg, and this is the Moderation we are like to expect from them. But this is not the worst of it yet. Though Protestants differ ever so much in principles and disobligations, yet upon common principles of humanity they agree. But here is no probability of that from the Papists. Nobody did promise more not to alter Religion to the *Norfolk* and *Suffolk* men, when they stuck to her title, than Queen *Mary* did; but when she came to the Crown, she burnt them, and was even with them; and for the Crown of *England* she gave them a Crown of Martyrdom. We have a great many Dissenting Protestants, and when time comes, I hope you will consider them, and be moderate; and this I have learned from the most moderate and mild man: But seeing an *Egyptian* and an *Israelite* fighting, he immediately slew the *Egyptian*, for he knew it was to no purpose to be moderate with him; and afterwards, seeing two *Israelites* fighting, endeavoured to part them, telling them they were brethren. This Bill proposed is the most ready way to secure ourselves, and the most moderate, and therefore I am for it.

Mr *Hyde*.] I desire to be heard a few words. I beg pardon of *Titus*, if I think he has treated this subject with more mirth than it deserves. (*Being called to, to speak up, he said, I will speak up, I promise you.*) A Gentleman took notice of the Action at *Solebay*, and "that Lord *Sandwich* was betrayed by Sir *Joseph Jordan*," with reflection upon the Duke's rewarding him with a Pension; though he said, "He would make no reflections." Neither he nor I were by, at that day's Action, but some here were present. And so the Gentleman goes backward to the King's Marriage, and the contrivance of it; and that goes near me, reflecting upon my father, Lord *Clarendon*'s management of the Ministry. I know not any Minister the King has had since, that has done so well to keep out Popery and preserve the Protestant Religion. I wish those that come after may. But to the business of this day. I am of opinion,

that the Duke, for deserting his Religion, deserves a great many mortifications from the Nation; and I believe the Duke is convinced, that it cannot be reasonable for him to expect to come to the Crown upon such terms as if he had not given those apprehensions and jealousies. The Question is urged for bringing in a Bill of Exclusion; but there is one Question before that, "Whether the House will go into a Grand Committee to consider of ways and means for the preservation of the Protestant Religion?" Does any man think, that this Bill will pass the Lords, and the King too? I pray God the King may out-live the Duke! But if it comes to the Duke's turn, whether will the Duke acquiesce in this Law? What security of importance is this Law, if the Duke out-live the King? The King, by passing this Bill, will involve the Nation in a Civil War; and then the short Question will be, "Whether a Civil War is more dangerous than a Popish Successor?" Are these looked upon as trifling things? There are more Protestants than Papists in *England*, and they may give a Popish Successor trouble, should he attempt a change in Religion. In all times there have been a great many worthy men, who in all difficulties will stick to the Crown, and in process of time there will be discontents amongst them who oppose the Crown, and those that are not pleased will join with them that are loyal, and there will be trouble in changing the Succession. It has been hinted, over the way, as a remedy to preserve Religion, "To leave the Duke as a General without an Army." Now you have an opportunity, you may make several Laws to suppress Popery, and of leaving the Duke alone, which being so, he cannot subvert the Protestant Religion. You have now opportunity, and you know a Popish Successor, and may bind *James Duke of York* by name, and there is one Power yet above betwixt him and the Succession. The Duke may die before the King, and the King may marry again, and have a Successor. Besides, the Crown has but a narrow Revenue, and the Parliament must supply it from time to time, for the ordinary exigences of the
Crown,

Crown, and the Parliament will then provide for their own safety better than by taking this way proposed. I would have these things weighed in a Grand Committee.

Colonel *Titus*.] I speak to the Orders of the House. I know it is against Order to speak twice to the same thing; but when any man is reflected upon, he has liberty to answer. The Gentleman who spoke last, said, "I made the House sport." I assure you, I should be loth to be so jested with; but every man has not the same way of expression. Jest is not jest without being sharp; nor are things serious because they are dull. I protest, I was as serious as I was able to be; and I was as honest in this as ever I was in my life. And so I am for the Bill, &c.

Mr *Harbord*.] I crave the same liberty of explanation of myself. I did not say, "That the Duke betrayed the Fleet at *Solebay*," but "that *Jordan* did, for not following the Fleet." I said nothing ill of the Duke, but "that *Jordan* afterwards had a Pension."

Sir *Leoline Jenkins*.] I desire the difference may be considered betwixt "Extremity," and "Expedient." The Bill to exclude the Duke, &c. is the Extremity, a thing rare and singular! Though Expedients have been offered and not accepted, yet it is hard to refuse hearing them; the rather, in regard that the King in the last Parliament did offer an Expedient. Pray consider, whenever this Bill does pass, whether it must not be supported by a standing Army.

Colonel *Birch*.] This is a great Debate, and much fitter for the House than a Grand Committee. Both in great things, and in things of lesser moment, we ought to think first, whether they be lawful, and next whether they are expedient. As for the lawfulness, no man doubts but that the King, Lords, and Commons may declare the Succession, &c. and have always done so upon occasion. Next, whether this Bill be expedient, at this time. For my own part, if any Gentleman can satisfy me, how this Nation can be safe in Religion or Property without this Bill, I will hearken to it. It has been judged by Vote in

the former Parliament, "That the Duke's being a Papist, and the hopes of his coming such to the Crown, have occasioned the insolence of the Papists, &c." and it has so passed *Nemine contradicente*. And I shall remind you, Gentlemen, whether the Duke can be trusted with a Crown, when every Evidence you have heard comes home to him in having a hand in this Plot. This is not Queen *Mary's* Case, who pretended and intended to be favourable to the Protestants. But here are promises and engagements from the Duke to root out Heresy. Queen *Mary* did once intend this, but she was so influenced by the Pope, that, as you have been told, she gave the Protestants, for the Crown of *England* they helped her to, the Crown of Martyrdom. What availed the love or obligations which the last King did show the Catholics in the year 1634, when it was represented to him that the latitude he gave them here in *England* would obtain the Protestants some favour in *France*? Till that dismal time in *October* 1641, they lived in *Ireland* with all neighbourly kindness to the Protestants in intermarriages, but when it was their interest, accompanied with their Fathers inducements, they committed that bloody Massacre in *October* 1641, and that after the greatest kindness from the late King. We are now speaking for all we have; father, and mother, and children, and many better than me. The Question is, Whether with the Duke's coming to the Crown we shall not have Idolatry set up with your consent. In short, I shall only observe, whether this Bill of Exclusion is now to be done? It may be said, "That it may be, it may not happen that the Duke may come to the Crown, and that he may be shorter-lived than the King, and that it may be, God may deliver us some other way." But you are not to stay for that. It may be it was not seasonable, when the last Parliament made those Resolutions, when they were in a high ferment about the Plot; and the last Parliament left the Nation as warm as warm could be. But has not the Protestant Religion been discountenanced since and? in all probability there are no means for your safety but this Bill. The Duke

Duke will be so far from being "a General without an Army," that hereafter he will have an Army; and as we had so far discouraged the Papists, that those of that persuasion were more contemned and scorned than ever they were before, so when the Parliament was sent home, they took heart again. No Expedient has been yet offered to help us, and when it comes, let it be shown how the Nation can be safe with a Popish Successor. One said to-day, "It may be, a Civil War will ensue upon this Bill of Exclusion." We have no great reason to doubt that. We know that foreign Princes have helped on that; but will any Gentleman, the meanest, that must deny his Religion and his God, or burn, fear bleeding for it? As old as I am, I should live a year or two the longer for it. I fear not that. And as to other things, they have been but only touched. I would have all before you. I lay this, Religion and Property, in the scale. As I now stand informed, and till I have farther satisfaction, I am for the Bill to exclude the Duke.

Sir Robert Markham.] If you intend to exclude the Duke, &c. I desire you will take the Prince of Orange's children into consideration.

Mr Bennet.] Could any Expedient be found out to preserve the Protestant Religion, I should be glad not to exclude the Duke of York from the Succession. In the last Parliament, no Expedient could be found out; and one reason for this Bill was the Preservation of the King's Life. The Duke being looked upon as Heir Apparent to the Crown, the King's Life is still in danger; the Papists, I believe, would still knock him on the head. This Bill will put it into our power to defend ourselves; and when the Duke is once out, by Law, from the Succession, no doubt but the Parliament hereafter will keep him out. The taking away the General will leave the Army alone. When a Catholic King has Places to bestow, and Power, he will have temptation enough for ransacking the City of London to maintain an Army. And we sit patiently here for an Expedient! Therefore I move for the Bill, as before.

Sir *Thomas Player.*] I am to let you know, that the City of *London* will not be left out in this matter. I know not where in the world to find an Expedient to save our Religion and Properties, but this Bill of Exclusion, &c. I remember that Expedients were offered in the last Parliament, and would then have been accepted, if they had been a substantial security to us and our Posterity. As for that one argument, of a Civil War that may come upon this Exclusion, I would let the World know, that we are not afraid of War upon that occasion. Let it be so, if there be no other way to prevent Popery. Let us, when the King is out of the World, be in a condition to fight for our Laws and Religion: I desire no more. I have no patience to think of having my throat cut, as I have been afraid, before I rise in the morning. In *Coleman's* Letters that were read, we see that all the Catholics in *England* depend upon the Duke, and those abroad too. Take away the General, and the Army will be weak and useless. Let the Duke be removed. I will not aggravate what the Duke has done; but there is one particular sort of people, not only Papists but Protestants, who make an interest to cry up the Duke, and who drink his health upon their knees, and it must be with a huzza too; and at the same time and company the King is scarce taken notice of. I have been afraid these twelve months, that they would serve the King a *Portugal* trick. God and the Kingdom call for some speedy course to be taken, for preservation of the King and Kingdom, and when that is done, I hope you will do more than that.

Sir *Christopher Musgrave.*] The bringing in a Bill to exclude the Duke, is not the Vote of the House; but the Question is, "Whether the House will go into a Grand Committee," as the way to make your former Vote effectual. Those Gentlemen were of opinion, that we should go moderate ways. This is a business of great weight, and I desire the House may go into a Grand Committee, to make that Vote effectual. I am of opinion, that now we must free ourselves from Popery,

Popery, or submit to it. I wonder that Expedients are now called for, when a man cannot do that in the House (where he can speak but once to a thing) which he may do at a Grand Committee. To extirpate the Duke, and at the same time not to declare his Successor, will be strange, and you will make the thing perplexed. It is not orderly to proceed in the House. A Grand Committee will put you in a way to prepare Heads to draw up a Bill upon, which will be better digested there than can be in the House, without those restrictions and limitations. I am not for delay in the case, but that we may be in a proper natural course for speedy progress. This you are upon, is no less than taking away a Right, and you are told, "It may endanger a Civil War, by putting the Duke from his Succession to the Crown of *England*;" which nevertheless cannot exclude him *Scotland*. And I should be glad to have the Borders secured, for my own concern, for I live near them. In decency to the King's Speech, consider all ways that you have not considered, and go into a Grand Committee.

Mr *Seymour*.] I have often reminded myself, since this Debate, that this Question is of the last concernment to the Kingdom; and whatever Resolutions are of the last importance, we ought to be unanimous in; since Gentlemen come not here with Resolutions, but to take them upon clear Debate of things. I am one of those that suffer under those wind-guns, in corners, of being "popishly affected." But when I come to be perfectly understood, it will appear that I have been as much against Popery and arbitrary Proceedings, as any man. It is proposed to go into a Committee, as the Grand Constitution of the House. The Proceedings in this great Matter will have all the constructions abroad, and therefore I would not depart from ancient Forms, but debate Heads at a Grand Committee; for persons will traduce your Proceedings abroad. Upon the Evidence you have heard, you have taken your Resolution. The Law excuses things done in haste, when affections are warm and apprehensions great. Therefore I would

cool them for Resolutions. I am unhappy when I take notice, that the only thing the King excepts in his Speech, should be the first thing you resolve on. A Gentleman who speaks well, to the advantage of himself and the Question, has told you, "That as to an Expedient, if the Duke come to the Crown the misfortune will be, that nothing can follow but Popery." The Duke's Children are as near to him as his Subjects, and they are Protestants; and if the Duke come to the Crown with those Principles, it is impossible for him to establish the *Romish* Religion in *England*. But we are unfortunate, if, under a Protestant King, who has done and suffered so much for the Protestant Religion, and against Popery, Religion should not be so established, that Religion, under a Popish King, should not be able to secure itself—This Law proposed binds not *Scotland*; and it is a question whether it can bind *Ireland*; and some have no apprehension of Civil War upon it. But the Duke will think you have done him wrong, and will endeavour to right himself; and till you have determined it, I shall think so too. When you seclude the Duke for Religion, you make a War for Religion; and that great King, who makes War for his Glory, will be glad to take this as a handle for your disturbance. And when once you are put to raise an Army to support your Law, adieu to all the Liberties of *England*! I believe, something upon the Debate may arise, which will not carry you to both extremes; and to that end I move, That you will go into a Grand Committee*.

Sir *Richard Graham*.] This affair is certainly of as great moment as ever was in an *English* Parliament, and therefore to be proceeded in with the greatest caution. If the Duke be criminal, he is subject to Law as well as I am. The greatest and the meanest Criminal is the same. Before this Bill pass, I would consider one thing very weighty, Whether it is fit to condemn the Duke before he be heard, or cited to appear; to take away his Right,

* Probably Mr *Seymour's* behaviour on this Question was the true ground of his Impeachment. *Ralph.*

before

before he be heard to speak for himself? Next, What will you do with his Children, who are Protestants, and innocent? You will not, sure, act the part of God so far as to *visit the iniquities of the Father upon the Children, to the third and fourth generation.* Through this matter a most dreadful Civil War may arise, as in the quarrel betwixt *York* and *Lancaster*, wherein fell ninety thousand common soldiers, and ninety Barons, besides the loss of Princes of both Houses. I would not kill myself for fear of death. That of *Scotland* is an ancient and independent Kingdom; and consider whether you will not open that gate to foreigners, as was Cardinal *Ricblieu's* design. In this I speak a little for my own interest: I believe I myself should be one of the first sufferers. I would have Gentlemen consider, that we destroy ourselves by dividing States. It has ever been fatal to them to be divided; as in the division of the *Roman* Empire, when *Theodosius* and *Arcadius* divided it into the Eastern and the Western, this dividing it brought in the *Goths* and *Vandals*. If this Bill must pass, it will be fit we know who our Successors are to be. Of all wise Nations, the *Romans* parted with the power to their Emperors to name their Successors, for the people to know them. In many Kings Reigns they have let the People know their Successors; and I hope we shall not reverse nor undo what they have done with great caution. I would not, in this great affair, make a hasty step, but agree to go into a Grand Committee, and I shall go as far as any man to seclude a Popish Successor.

Sir *William Pulteney*.] I am afraid that a Popish King will have a Popish Council and Popish Bishops; and that Priests and *Jesuits*, now skulking in corners, will appear in public, and that the Government will be Popish. If there be such a bent to the Duke, now he is but a Subject, what will there be when he comes to be King? Either now you must preserve the Protestant Religion, or never; and leave the rest to Providence, when you have done your part. When once we have a Law
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on our sides, and Protestants bound to one another, I hope Protestants will be able to keep out Popery, without an Army. If the consequence must be a Civil War, we must trust in God. No man can instance a Popish Prince and Protestant Subjects. I could wish we had Expedients, instead of this Bill of Exclusion. Those that have them, will have time enough to bring them in; and pray put the Question now for the Bill.

Mr *Daniel Finch*.] This is the greatest Debate that can come before a Parliament; and I should be glad we may make such steps in it, as not to precipitate an affair of the highest importance, when we would not transact a lesser without deliberation. The matter will have prejudice both abroad and here, if you consider not the honesty as well as legality of it. Though it is the natural Question, "Whether you will go into a Grand Committee to consider Expedients," the Question I will make is, "Whether justly and honestly you can make such a step as this?" It is agreed by all, that the Duke of *York* has a Right to the Succession of the Crown; and whether any Apostacy of Religion can forfeit that Title; only for deserting the Protestant Religion, and turning to Popery, which is Christian Religion still? No man in the primitive times but asserted his Allegiance to *Julian* the apostate Emperor, though an Apostate from Christianity. To the legality of it, be it far from me to circumscribe the Authority and Limits of your Power! But without an Act of Parliament against it, nothing is more clear than that of the Duke's Right to the Succession. *Camden* tells us, "That Queen *Elizabeth* would not declare her Successor, and be left the Step-mother of her Country."—I desire leave to tell you a story, and not to be thought to reflect upon the Times of 1640 and 41. When *Henry* the Fourth of *France* was stabbed in the mouth by *Clement*, one of his followers said to him, "Have a care! You have denied God with your mouth in changing the Protestant Religion outwardly." And afterwards, when he made open profession of the *Romish* Religion, he was stabbed in the heart [by *Ravilliac*.]

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We have had one Prince cut off (*Charles I.*) on pretence that he was given to Popery. I would not disinherit another on suspicion of Popery. If you will admit no possibility for the Duke to return to our Church, you go about to rivet him in Popery. Nothing settled *Qu. Elizabeth* in an impossibility of return to the *Romish* Church, like the Pope's bastardizing her. Possibly the Duke may return to our Religion; and we have an instance of it in a worse Religion, in *Henry the Fourth of France*. But I will speak something to Method, and your regular way of Proceeding. To what is said, "of having not yet heard of any Expedient to save our Religion, &c." the proper place of that is a Grand Committee, and Gentlemen know what offer was made by the King, the last Parliament, for your security. Should I make a Motion, "That all the Papists in *England* might be murdered, to save our Religion," would not Gentlemen say, "Pray let us have Expedients, before we come to that?" Possibly there may be some that Gentlemen are not aware of. The King has offered any Expedient but this of Exclusion; and how can you answer it to the King? Can you examine any Expedient but where there is liberty of debating it? When a Motion is made for Money, for more freedom of debating it you go into a Grand Committee: Why not in this, which is of the greatest importance, when you do it in a lesser, as to Money?

Mr *Boscawen*.] I thought there was no need of troubling you at this time, this matter being so well debated, but from something which fell from *Finch*. I desire he would consider, that though the Church of *Rome* be said to be "a Christian Church," and the Papists "Christians," yet all good Protestants think them to be Antichristians. Can any man think them the disciples of *Christ*, that have murdered so many good Christians, and committed that Massacre in *Ireland*, where the Government was Protestant? After all kind usage and intermarriages amongst them, the Papists in *Ireland* murdered some hundred thousands; A thing not heard of amongst Heathens!

Heathens! These I cannot call "Christians." If this be so, we cannot expect better usage from them than our Ancestors have had. Remember the Massacre of *France*, where, under a pretence of inviting all the Great Protestants to the King of *Navarre's* Marriage, they had their throats cut. In *Piedmont*, the poor Protestants were hanged up like mice and rats; and we cannot expect *grapes from thorns, or figs from thistles*. We can expect no better from them. Consider the Duke's interest, how it is engaged with *France* and the Pope against *England*, in opposition to the King and Parliament, and the true interest of *England*. God is my witness, had I the least probability of security, I would not open my mouth against the Duke's Succession. The King living, and though the Parliament has made so many Declarations against these restless spirits, yet nothing will content them; and all from the great encouragement they have from the hopes of the Duke's coming to the Crown, and the countenance they have from him. As for the legality of putting the Duke from the Succession, &c. the Statute of the 13th of *Eliz.* puts that out of question, and self-preservation is no breach of Christianity. I now speak for the whole body of *England*, to our preservation, which cannot be without something of this nature. If it should be made lawful to rise against a King that is a Papist, why should we not prevent it, and having our throats cut, and going to *Smithfield*? It is natural in every Government to preserve itself. Here is no *majus et minus* in that Case, that makes no difference. If you make a King that shall have Tutors, you by that dethrone him; either you must make him no King, or your Laws will not bind him when he is King. The Nation was easily drawn to Popery after Queen *Mary's* time; and the Privy Counsellors in *Hen. VIII's*, *Edw. VI's*, Queen *Mary's*, and Queen *Elizabeth's* time, all changed, when the Prince changed. They were of the Bishop of *Paris's* mind, who would not change his part in *Paris* for his part in *Paradise*. The nature of our Government is quite contrary to any
Expe-

Expedient. The King names all the Counsellors, Judges, and Bishops. And what manner of King would you make him, by limiting him? It was the saying of King *James*, "Let me make what Bishops and Judges I please, and I will have what Laws and Religion I please." As for the fear of a Civil War, if once the putting the Duke from the Succession, &c. be a Law, whoever rise against it are Traytors. Nothing will unite Protestants but this Bill; nothing will prevent a Civil War but this, and prevent us from being hauled to *Smithfield*; nothing else will prevent this but the Bill, and therefore I am for it.

Mr *Trenchard*.] I think he is no good Subject that will say the Duke has any Right to Allegiance till the Crown shall descend to him. The King has it *jure Corona*. It is a strange way of arguing, not to prevent him coming to the Crown who would ruin the Nation. Here has been little of Expedient offered to us. To be secured by Laws with a Popish Successor, is not practicable. When a Popish King comes to the Crown, either we must submit, and change our Religion, or resist. In *Sweden*, the Queen was deposed because a Papist; and in *Bohemia* the established Religion is Popery, though the Protestants were connived at after the Emperor had reduced it. That loyal Party will be no Party, which, it was said, would stick to the Duke, when there is such a Law as makes them Rebels who would set up the Duke's Title. If the Militia were in the hands of good Protestants, and not in those of the Duke's Party—It is that makes us tremble. If this Bill pass, and we are fortified with good Alliances, nobody will molest us. All *Christendom*, and even *France* itself, with their wise Council, will not act against their own interest. We have a Navy which secures Trade, that may secure Religion, and may secure us from Invasion.

Resolved, That a Bill be brought in to disable the Duke of *York* from inheriting the Imperial Crown of this Realm. [And a Committee was appointed to prepare and draw it up.]

Wednesday,

Wednesday, November 3.

Sir *Edward Dering*.] I desire leave to bring in a Bill “for uniting his Majesty’s Protestant Subjects;” I think justly so called. The method of it will be judged best by you; and it may be so penned, without offence to the Reverend Fathers of the Church, the Bishops.

Mr *Dubois*.] Within these two weeks I was at *Canterbury*, where I had the honour of a visit from Dr *Du Moulin*, when he communicated some papers in *French* to me, in which he has been these eighteen years challenging the *Jesuits* with a witness, “That they did not only contrive the troubles in 1641, but, by means of the Rebellion in *Scotland*, when they saw they could not make the late King forsake his Heresy, they would take away his life.” Sir *Kenelm Digby* was the man sent to the College of the *Sorbonne* at *Paris*, from the Catholics of *England*, with this question, “Whether, for the good of the Catholic cause, the King might not be taken away?” And they concluded he might. With eighteen of their Body they sent their Opinion with *Digby* to *Rome*, where it was likewise resolved, and all care was taken to effect it. Pursuant to this, the King’s head was cut off; which being done, there were great Jubilees for it at *Rome*. But this was suppressed by the Queen-Mother, who imposed silence upon him. Dr *Du Moulin* has offered, several times, to make this appear. The Pope called for all the Papers of this affair, out of the *Jesuits* College at *Rome*, and had them burnt. It is they that divided Protestants from Protestants, and that was the intention of laying this Plot upon the Presbyterians.

Resolved, Nemine contradicente, That a Bill be brought in for the better uniting of all his Majesty’s Protestant Subjects.

On a Motion for sending for Sir *Thomas Whitgrave*, and one *Birch*, of *Stafford*, Apothecary, in custody, to answer to the charge given against them by Mr *Dugdale*:

Sir *John Trevor*.] I know not whether it has been the custom of this House to send for Persons in custody, unless

unless for something of offence against the Privilege of the House immediately.

They were sent for in custody.

Thursday, November 4.

Mr *Harbord* reports, from [the Committee appointed to examine *Lionel Anderson*, a Priest convict, in] *Newgate*, That Captain *Richardson* [the Keeper,] brought Father [*Anderson*, alias] *Monson*, to the Committee, who owned his Petition to the House, delivered the day before. We told him, if he would not clearly and fully relate what he knew of the Plot, the House would not intercede to the King for a reprieve for him from execution. He said, "there had been so many Catholic Informers already, that what he could say might be nothing farther than had been already confessed." He made solemn protestations, "That he knew nothing of the Plot;" so we were coming away. Then, being sensible of his danger, he pressed us to hear what he could say, if the House would think him worthy, upon the Report, to intercede for him. We, considering that there was life in the case, were ready to take his confession rather than deny it him. Some light he gave us in matters which lie heavy upon you. He said, "That about *November*, five years since, Mr *James Porter*, in the Duke's name, told him, "He was a schismatical Catholic, and had given disturbance to the Church." He applied himself to Lord *Mulgrave**, who had orders from the Duke of *York* to promise him to be one of the Priests to the Dutchess, when she came over. That he was told by Lord *Mulgrave* from the Duke at *Whitehall*, "That the Duke was angry with him, in that he spoke against Miracles;" for which he was excommunicated. A year after, Lord *Mulgrave* told him, "he kept company with Father *Welsh*, and was schismatical, and was devising new Oaths (of Allegiance)." I was commanded not to name one man plain, *A. B.* "There is such a man," *Anderson* said, "about the *King's Bench*, who, since he came to the *King's Bench*, wondered to see him there, for by the Duke's interest he was to be sent away to the Inquisition, for writing a *Latin* Letter about giving Degrees to Father *Vincent*. One reason why he was to be sent to *Rome* was for defending the Oath of Allegiance. Two years since, the Bishop of *Salmas* desired the Duke he might come to him; the Duke said, he would not speak to him then. But afterwards the Duke told him, "He must be obedient to his superiors, else he would do nothing." He said, that a *Franciscan* Friar, upon the same account, was slipped away into the

* Afterwards Duke of *Buckingham*.

Inquisition. The Cardinal of *Norfolk* told him, he had sent two or three away into the Inquisition in the same manner. He and Father *Welsh* applied themselves to the Duke of *Ormond*, who said, "If he and *Welsh* were sent away, they should all be served in the same manner." He remembered that a Letter was written by one *Edward Peters*, which was made use of at the Tryals by direction of *Whitebread*. Though *Peters* was a person proscribed, and twenty weeks in *Newgate*, yet by *Habeas Corpus* he got bailed, and was at liberty.

Mr *Hampden*.] This Report perhaps may seem foreign to the intent of Examination of the Plot. The man professed he did not know of the Plot, but he gave some circumstances of the Plot from the *Jesuits*. Perhaps he was not taken into the inward part of the Plot, yet he might make conjectures from Sir *Edmundbury Godfrey's* death, whom all concluded to have been murdered, some thought not by the Papists, but all concluded it done by the *Jesuits*. "They forbad Mrs *Cellier*, he said, coming to me, for I deserved to be hanged: She took *Dangersfield* out of Prison, to go about to Coffee-houses to persuade people this was a Presbyterian Plot: The Narrative I wrote was to distinguish myself from the Plotters." *Monson* signed this his Confession voluntarily. He said "He had not officiated, nor been at any Ambassador's, these five or six years. If he should go into *France* or *Spain*, he is sure to be put into the Inquisition for what he has done here, and if the Plot had gone on, no doubt but the Inquisition would have been set up here, and he had rather end his days in a hole in *Newgate*, than be put into the Inquisition. If the King would give him leave, he would go into *Holland*, and end his days there, and give security never to return more into *England* again." I will not propound any thing, but if you will address the King to grant him a reprieve, I leave it to your consideration.

Sir *John Trevor*.] That Letter mentioned of Mr *Peters* was for the consult of the *Jesuits* at the *White Horse*. If there can be direct proof made of that Letter, it will be a mighty Evidence of the Plot. It was about the consultation of the King's death. I would have that part opened.

Sir

Sir Robert Clayton.] I will give you some light into it. Enquiry was made, after *Peters's* being bailed. The Keeper of *Newgate* owned that Letter. *Anderson*, alias *Monson*, thought it a hard case that he should be tryed and condemned, after he had owned himself to be a Priest, and that he gave then an account to the King, how that the King, upon all occasions, had always excepted *Peter Welsh*, and himself, out of the Proclamation.

Sir Nicholas Carew.] I think this man's case hard, having written for the Oath of Allegiance. If he goes over beyond sea, he will be put into the Inquisition; if he stays here, he will be hanged. I would intercede to the King for a reprieve for him.

Mr Garroway.] I confess, in some case, this man may be useful. I do not know but in this man's examination something may be of use. I would intercede to the King for a reprieve for him, but I would not be too hasty for a pardon.

Mr Harbord.] If you do not something for this man, it will look like drawing him to confession to make him lose his life. This man stands in the *Romish* Church as a Schismatic, and a Priest will not converse with him. Doubtless, if the Parliament should be up, and the Protestant Religion not be settled, nor the King's Person secured, this man, if that should happen, will be hanged, and the rest of the Priests and *Jesuits* reprieved. You see that Witnesses have been discountenanced, and a sham Plot invented. (I value no man's head, that stands betwixt us and safety.) I would have the World see, that the Protestants of *England* are not persecutors of Christians, but that this man may have some encouragement.

Sir Gilbert Gerrard.] This man has made you a great, confession, and it is plain that this man's case comes within your favour, and I believe he has informed you truly of things, as far as he knows. He expressed so much of the Duke's zeal to the *Romish* Religion, that he may come to be hanged with the rest.

Mr *Powle*.] I will say nothing to hinder your inclination to mercy, wherever you find cause to distinguish persons cases for your intercession. If persons must be taken out of *England*, and put into the Inquisition, every man may be in danger of it. If you please, while this matter is warm, send to *Monson*. This *A. B.* he mentions else may be sent away. Send to examine this unknown person.

Mr *Hampden*.] The Reporter knows his name very well, and he may be sent for.

Sir *Robert Clayton*.] If you intend to have any fruit of this matter of sending to the Inquisition, you may send to examine *A. B.* and upon that Report I shall move you to address for a reprieve.

Colonel *Birch*.] I would have this a complete Report, which will not be till *A. B.* be examined. Your Report was not complete in *Coleman's* examination, till you re-examined him.

The Committee was ordered to examine *A. B.* and concerning *Peters's* Letter. Upon Debate, the Committee was empowered to send for Persons, Papers, and Records.

Mr *Hampden*.] This Information about the Letter is from Captain *Richardson*, "That *Peters* told him he had written by *Whitebread*."

Lord Ruffel reads the Order "for bringing in the Bill to disable *James Duke of York* from inheriting the Imperial Crown of *England*, &c." According to this Order, the Committee have drawn a Bill, and have commanded me to present it.

[The Bill was read the first time.]

Sir *Leoline Jenkins**.] I crave leave to speak against a second reading of this Bill, till I am satisfied that it is for the service of the Crown, and the safety of the Nation; till I am satisfied of the Justice of it, whether it be na-

* *Jenkins*, now made Secretary of State in *Cowentry's* place, was the chief manager for the Court. He was suspected of leaning to Popery, though very unjustly: But he was set on every punctilio of the Church of *England* to superstition, and was

a great assertor of the Divine Right of Monarchy, and was for carrying the Prerogative high. All his Speeches and Arguments against the Exclusion were heard with indignation. *Burnet*.

tural to exclude the Duke, &c. before you hear him. I would do in this, as one man would do by another. In Reason we ought to do, as we would be done by. Popery is a crime, and punished by a Law already made; but here is now a Law for this Prince alone to be excluded, &c. Consider whether it be just to make a new Law for one person. Consider from what principle this Bill does flow; whether it be not rank Popery. It hath been disputable among some of the Schools, whether Dominion be founded in Grace, or no. None but Papists and Anabaptists preach that notion. As to the principle of the Duke's being a Papist, and therefore not fit to succeed to the Crown, it is maintained by the Schools, Councils, and Common Law, that a King may be deposed for Religion's sake. Consider the practice of the Papists by this principle. *Germany* had six Emperors deposed for Religion—But to come nearer to our own times, *Hen. IV. of France* was first King of *Navarre*, and then was declared by the Bull of *Sixtus V.* not only incapable of the Kingdom of *Navarre*, but of succeeding to the Crown of *France*. The Pope proceeded against *Queen Elizabeth* upon the account of Religion only. That I desire to be considered, whether this Bill is not founded upon the same principle and practice of the Papists. Farther, this Bill, as it is drawn, does change the very essence and being of the Monarchy. Consider whether you do not reduce it to an Elective Monarchy. In the essence of the Monarchy, the Duke is Heir to the Crown, and this Bill is opposite to Primogeniture. We know the inconvenience of an Elective Monarchy by the disorders of *Poland*. Consider whether this Bill is consistent with the Oath of Allegiance we have all taken—By the blessing of God, the King has not his Crown by designation; he is not an Elective Monarch. Not that I have sworn Allegiance to the Duke during the King's life: I have taken that Oath in the sense of him that imposed it. I took it ten, twenty years ago, and if I am asked what is meant in that Oath by "Heirs and Successors?" I answer, the next Heir to the Crown is the Duke, in case the King

have no children. If I am sworn to this Allegiance, whether can any intervenient Act annul it, and whether, under this obligation, any power on earth can absolve me from it? I will not take upon me to dispute this Law when it is made; but before it be made, I may dispute its convenience. I believe it is not in the power of man to absolve me from that Oath. When God gives us a King in his wrath, it is not in our power to change him; we cannot require any qualifications; we must take him as he is. An infant, that knows not his right hand from his left, by our Law is not to be set aside from the Throne, but is as much King, as if a man at full years. This Allegiance binds my faith nothing at all so long as the King is alive, but my Oath binds me to his Successor. Lately, in *France*, when *Hen. IV.* came to the Crown, a Protestant, the far greater and most powerful part of both the Court and Army did make it a question whether they should submit to a heretic Prince: Some would not at all oppose him; others would set up his old uncle, the Cardinal of *Bourbon*, for King; another Party, a *squadron volante*, would not acknowledge him till he turned Papist; but the greater Party thought it their indispensable duty to obey him; and did so, because they should be in less danger with a heretic Prince, than by a Civil War if the thing was contended. It is a fundamental maxim not to enter into an uncertain for a certain mischief, and upon these considerations, pray lay this Bill aside.

Mr *Montagu*.] The other day, this worthy Member told you of the Laws abroad in relation to Succession, and now he says, "This is a Popish Bill." I observe, that his knowledge of the Laws and Divinity abroad is more than at home. If any man thinks that the Duke, &c. is not in the Plot, nor a Papist, let him give his Vote against the Bill: I am satisfied in both, and therefore do desire the Bill may have a second reading. Till this Bill be passed, the King is exposed to the malice of the Papists, and importunities of solicitations from the Duke's friends; and I hope this Parliament will give as good testimony of
their

their duty for preservation of the King's Person, and the Protestant Religion, as the last did. Saving the King from the malice of *Rome* is as great service as bringing him from *Brussels*. This Bill saves the King's Prerogative and Religion, and two good things it saves besides, the King's Life and his Authority; and I am for a second reading.

Mr *Hampden*.] I apprehend, *Jenkins's* Reasons have not that weight as he lays upon them. He tells us, "We should do as we would be done by." But this Rule is to be rightly understood; it must be by a regulated will. No man but would be saved from death. A Malefactor would. Surely in that case it cannot hold, "To do as we would be done by." I am not of opinion that the Bill should singly exclude the Duke, because he is a Papist, but that with the consequences: Not so much as a Papist, but because of the inseparable principles of that Religion, in which it is impossible the Nation should be safe. It has always been said by the Papists, "That this is a bloody Law, to put men to death for Religion as we do." But that is Popish, to say "It is for Religion." You have always disowned it; it is for their consequential principles. I do not think (as *Jenkins* said) that this Bill makes the Kingdom Elective. I know not but in an Hereditary Monarchy, if a Successor will destroy the Kingdom, he may not be put by the Succession, but the Pope is your King if you have a Popish Successor, and it is not far remote when a King is a Papist. What will become of you when you have broken prison? Shall you fare any better when the Inquisition is set up, that nothing but the blood of so many Martyrs and Confessors at *Newgate* can else be expiated? Do you think that will be forgotten then? When Popery comes into *England*, it will come with advantage enough without all these provocations. Their Religion is none but the pride of avaritious Churchmen. Upon these considerations, I move for a second reading of the Bill.

The Bill was ordered to be read a second time [on *Saturday* next.]

[*November 5, Powder Plot.*]

Saturday, November 6.

On putting the Laws against the Papists in execution against the Protestant Dissenters.

Sir *Francis Winnington*.] As soon as Lord *Clifford* came into the Ministry, all sorts of Protestants came within the Statutes of Recusancy, and were convicted and punished by those Statutes. In the County of *Cambridge* three hundred and odd dissenting Protestants were convicted upon those Statutes, and one poor man was fined a Mark as a Recusant. I have heard that an ancient Parliament-man, in the late Long Parliament, when the Act of Conventicles passed, should say, "Why will you not put the Papists into this new Law?" It was answered, "There are old Laws in being for them already." So that the poor Protestant had both sorts of Laws against him, and but one against the Papist. This is the great concern, for no greater design can be for bringing in Popery than to divide Protestants. I have heard, that there was a literal exposition lately by the Judges, in their Circuits, of the Laws against Recusancy, so that the Grand Juries have not presented the Protestant Dissenters upon those Laws. When Lord *Clifford* set up those Laws against Dissenters, which were asleep before as to the Papists, it was the great work of the *King's-Bench* to prosecute these Protestants, and they were put to great charge for *Supersedeas's*. That these Laws were never intended to extend to the Protestants, is clear; and we find in our Law-Books, that when there hath been Error in the Judges Judgment, they have come to Parliament for exposition of doubtful Laws. The Judges are not bound by your Vote, nor does that suspend the Laws: But it may cause them to be a little more easy. Therefore I would adjourn the Debate of that Vote now. But what we do, must either be by a Declaration of the Law, if doubtful, or by a Vote, for a present guide to the Judges in their Proceedings.

Mr *Finch*.] The Statute 3 *James* was not intended against Protestants, but some have involved all that may be. The intention of the Declaration was for Toleration.

As

As you have begun to separate Protestant from Papist, so I move that you would do something for the ease of Protestant Dissenters. No Vote of yours is a Declaration of the Law of *England*, but you give your opinion, which is not a total suspension of the Law, but only to take off the vigorous prosecution of it. Your old Vote, in the Long Parliament, did recommend in particular to the care of the Committee to make a distinction betwixt Papist and Protestant, and a List was brought in from each County of the most considerable Papists, and I do believe those Lists are still extant, and the Attorney General to enter a *Noli prosequi* upon all persons in that List.

Sir *Henry Capel*.] I think this Motion is better timed than for a Bill. The present Question is only for a Vote; we are now to enlarge the Church as far as we can, and make the Pale of the Church as wide as we can; we want help against the Papists. It is but lately that Lord *Clifford* brought this prosecution upon them. Though now he is dead, yet he will ever be remembered in the House of Commons. We have felt it. I would only now declare, "That the Law was not intended against Protestants, but Papists." The great Minister of State, Lord *Burleigh*, wrote to Qu. *Elizabeth*, "To let the Dissenters be tenderly used upon all occasions, that in any extremity they might be ready to join with her against the common enemy, the Papists." A Vote will show your sense for the present, and will give the Judges light for the present, and I move for such a Vote.

Mr *Hampden*.] Say, if you please, by your Vote, "That as to those Laws made against Popish Recusants, it is your opinion that they are only made against Popish Recusants, and ought not to be put in execution against Protestant Dissenters, and that they were intended only against Popish Recusants, and not Protestant Dissenters."

Mr *Sacheverell*.] There is a dangerous Law against Protestants, the 35th of *Elizabeth*; Popish Recusants are excepted out of it. The consequence of that Law is, that the Papists need no other Law against Protestants. I am a little afraid of it, I must confess. It has been said,

"That what you declare cannot expound the Law," and if this Law be extensive to Protestants, your Vote will do no good. I have seen, indeed, that your Vote about the Chimney-Money, which was your Declaration of that Law, did no good, for the Officers proceeded in it as they did before. Therefore you must go farther than a Vote.

Colonel *Titus*.] I suppose you intend not to declare the Law by a Vote, but the House may declare an Opinion.

Resolved, Nemine contradicente, That it is the Opinion of this House, that the Acts of Parliament, made in the Reigns of Queen *Elizabeth* and King *James*, against Popish Recusants, ought not to be extended against Protestant Dissenters.

Mr *Sacheverell*.] This Question being over, we ought to consider the Statute of the 35th of *Elizabeth*. There is Abjuration and Felony in that Statute; every thing but life against a Protestant Dissenter, nay, life too, in some cases; and I am the rather for repealing it, because it does not extend to Popish Recusants. I move, "that that Statute may be repealed, that it may not be made use of against Protestant Dissenters."

Mr *Garroway*.] The Motion is made, I believe, that that Statute may not be made use of against Protestant Dissenters, when you are sent home, and I desire it may be read. *Which was done accordingly*.

Mr *Sacheverell*.] It is true, that the latter part of that Act is but temporary, but by an Act of this King, it is declared perpetually in force. I move therefore for a Clause, in that which you intend for ease to Dissenting Protestants, to repeal that Statute.

Sir *Thomas Lee*.] The grounds of our apprehension, if we fall under a Popish Prince, are, that by this Statute Protestants may be banished; but unless you take care that the Writ *de Excommunicato capiendo* be not taken away, you had as good banish a man, as let him lie perpetually in jail.

Mr *Sacheverell*.] Should you join this Writ with your Bill you may have the Writ, it may be, and be put upon
some

some other way of punishment. Let it go alone in Instructions to your Committee. It may be, the Judges will not put the other Laws in execution, but if they be forbidden those Laws, they may put this of the 35th of *Elizabeth* in execution to its height, and send Protestants out of the Kingdom.

[*Ordered*, That a Committee be appointed to prepare and bring in a Bill, for the repeal of all or any part of the Act of Parliament, made in the 35th year of the reign of Queen *Elizabeth*, Chap. 1. printed in the Statute-Book of *Pulton*.]

Mr *Jennison* gave an account at the Bar of his knowlege of the Plot, and Father *Ireland*, &c. See the printed *Narrative*.

The Bill to disable the Duke of *York*, &c. was read a second time.

Sir *Richard Temple*.] It may be, you say farther than you intend in this Bill. The Duke being disabled to inherit the Crown, by Act of Parliament, the Question is, Whether any body can claim any inheritance by, from, and under him? In the case of Lord *Delawar*, there was such a Question in Parliament, That he should be disabled to claim or enjoy any Office, &c. during his Life*. A Question then did arise, Whether it did not extend farther than to personal disability? I offer this to you, that nothing in the Bill should alter your intent to a Protestant Successor.

Sir *Leoline Jenkins*.] I desire to be heard one word. I will not enter upon the consequences of this Bill, nor what I have spoken the last day. This Bill reflects upon the Nation, as if, when the Duke came to the Crown, there would be a change of Religion. I hope that five hundred Members of Parliament will resolve not to change Religion, though the Duke come to the Crown. I hope that the Protestant Religion I was baptized in, and have made profession of abroad, and in all places, I

* 2 *Edw. VI.* He was bred up by his uncle *Thomas Lord Delawar* (who had no issue) but not being content to wait for his death, prepared poison to dispatch him.

For this, on complaint to Parliament, he was disabled to succeed to his uncle's honours or estate, but was afterwards restored in blood, in 1568. *Rolls of Parliament*.

shall die in. It has been observed, that no Nation is more tenacious of their Religion than *England*. To suppose that Popery will come into *England*, is a dishonour to *England*. By this Bill, the Blood Royal of *England* will be disinherited. How will that stand with the Recognition, where the Lords and Commons swore to King *James*, a vow of obedience to his progeny for ever? And this Bill removes the next Prince of the Blood from the Succession. Is there any security that the present Prince may not be in danger of removal, if this Bill should pass? The Indictment against *Charles I.* supposed a crime, that he raised War against the people—The greatest dread of all is, the Heir to the Crown being taken off by Law, and no Successor appointed; a cloud I cannot look through! If a Pretender be set up for the Crown, who shall decide it? This is of great dread to me. I would not commit the Bill.

Mr *Booth*.] I would not have spoken, but upon occasion given by *Jenkins*. Since you have thus far engaged, you had better never have meddled with it, than now lay it aside, to discourage all the Protestants in *England*. I wish he would show us, that, in case the Duke come to the Crown, we must not either fight or burn; and, as the Law stands now, should the Duke come to be King, whether it is not against us, and that we must submit or resist, if we have not a Law for us? He puts a strange case, that, if we exclude the Duke, we shall in time come to question the Sovereign. Pray commit the Bill.

Sir *Henry Ford*.] The King told us, in his Speech, "That the eyes of all *Europe* were upon us." This Bill is a thing of the greatest consequence. If you make a Law, who shall not succeed to the Crown, the regular way is next to declare who shall. I shall never think that Dominion is founded in Grace, or Nature, but from a power ordained you know by whom: *By me Kings reign*. They say, no man is born with a Crown on his head, or a saddle on his back. The end of this Bill is great, and I hope you will come to it by lawful means. In
the

the case of *Hen. VII*, he was not only disabled to reign, by Act of Parliament, as his Royal Highness is by this Bill, but he was attainted of High Treason. It was then the opinion of the Judges, that, without a Bill of Repeal of the Attainder, the descent of the Crown upon him purged away all. I am as fond, as any man, of the Protestant Religion; but I offer to your consideration, how far the legality of this Bill will be.

Sir William Hickman.] Here is nothing in the Bill that the Crown may devolve to the next Successor. Suppose that two Protestants lay claim to the Crown; if they divide, they may let in Popery at the end of it. Princes often leave those things doubtful, but Parliaments should leave them plain. I would have it left to the next right Heir in Succession.

Sir Nicholas Carew.] I would add a Clause to the Bill, to exclude all other Popish Successors.

Sir Thomas Lee.] Perhaps there may rise a difficulty, who is a Popish Successor? Who must judge that?

Mr Harbord.] I have a great mind that this Bill should pass, and I approve of Gentlemens zeal for future security. I would have it provided in the Bill, "That no King shall marry a Popish Queen," if we be so happy that this Bill should pass. It is from thence all our miseries come. I have been told, that we owe our misfortunes, of the Duke's being perverted, to his mother; from her we derive that wound. If this Bill should exclude the Duke's children from the Crown, that are Protestant, I am against it; it is unjust. I would not have them suffer for their father's fault; though I hope the King may have children, which will then put all out of dispute. Let not the Bill be clogged, but commit it, to the end that the King may be safe, and we. I would not clog this Bill. I am sure we can never be safe in prospect of a Popish Successor.

Sir Christopher Musgrave.] Nothing is more natural, than in this Bill to declare a Successor. When you take off this Prince from the Succession, the danger is great, and much more without this Clause of declaring a Successor.

I dread

I dread the thoughts of the late times, in taking arms for the King against his authority. Therefore if we name the Successor, we have the Law on our sides, and then by no authority the Successor can take our lives, if the King should die, and leave no children. Let that be part of Instructions to the Committee, to name a Successor.

Colonel *Birch*.] I cannot agree to the Motion of naming a Successor to the Crown. Consider what we are doing; not only securing the Protestant Religion, but the King's life, and, I hope, long life; and till this Bill pass, it is the interest of every Papist to do, what I hope God will never permit. I remember the Answer Queen *Elizabeth* gave the Parliament, when they pressed her to declare her Successor*; a thing I would by no means have done at this time. I would have the Bill stand upon its own bottom, and I am not for giving this in Instructions to the Committee.

Sir *John Knight*.] Will you deprive the King, by naming a Successor, as if you would suppose the King should not have an Heir of his own?

Colonel *Titus*.] You have been regularly told, "That you cannot name a Successor." And if you can, it is very dangerous. Suppose the person you nominate may be a Papist, or commit a crime whereby he may lose his head (for he is still a Subject.) If you nominate a Successor now, you will not make an Act for the Queen to live, or the King not to marry again. There are so many inconveniences in it, that I would lay it aside.

Mr *Garroway*.] As the Bill goes now, there may be danger that it will hinder your Bill, if there be not some general expression that no Protestant Heir be excluded the Succession. If we will not do something of that nature, it looks like setting up a Commonwealth. That you may arrive at your end, I would give the Committee such Instructions.

* *Viz.* "That the naming her Successor, would be digging a grave for her."

Mr *Finch*.] I was surprized at the bringing in the Bill, but much more that we should leave all things at uncertainty who shall succeed, &c. Nothing is more natural than to expect some fruits from this Bill. As for what is said, "That the Successor may turn Papist," that argument may hold the other way; the Duke may turn Protestant. "Possibly (says *Titus*) the person named may lose his head for some crime, and that an Attainder is vacated by coming to the Crown." But we are not in that case, Possibly the King may die before the Duke, and if no Successor be named, there will be an undeniable *interregnum*. If I limit a portion to my daughter, with condition that she shall marry with the consent of such a person, yet, if it be not limited to another person over, who shall have the portion in case of her failure? It is void in Law. I think this is the same case. I hope the King may have a son, and so possibly may the Duke. If you do any thing, order it thus, "That in case the King die before the Duke, such of the Duke's children shall succeed, as if the Duke were naturally dead."

Sir *Robert Howard*.] This is as dangerous a point as can be moved, but the sense of the House in it will conclude every man's opinion. What is moved is of a strange nature. To talk of the King's death is not usual in Acts of Parliament. If you shall say, such an one shall succeed the King, by name, it will be a fine invitation to him to endeavour to succeed. This is not language to be put into a Bill. It is the King's life we all depend upon, and I hope this House will show the World how little they are for a Commonwealth, and shame them that have said to the contrary. But it is said, "In case the King should die, the Nation must be upon some certainty who shall succeed."—How little does the Law esteem remote contingencies that a common Recovery cuts off! Many may object, that this will be a reflection on the Duke's children, if they are not mentioned in the Succession—But is it not as natural with a saving to all Protestant Successors as well to be hereafter, without *ifs* and *ands*, as in common savings of a private

vate Bill? I think that a saving to all Protestant Successors will be sufficient.

[The Bill was ordered to be committed.

Resolved, Nemine contradicente, That it be an Instruction to the Committee, that the Exclusion in the said Bill do extend to the Person of the Duke of York only.]

Monday, November 8.

Sir Robert Clayton gave the House Information, That there were some at the door, who could give an account of the scandalous deportment of one Mr Joseph Pagett, a Minister, in matters relating to the Votes of this House.

Mr Loe, an Evidence.] On Tuesday night last I was at a Coffee-house in St Michael's Alley, when I had some acquaintance with me, where calling for the Votes of the House, they found them thus abused, viz. The Vote of the Duke's being a Papist, and the hopes of his coming such to the Crown, &c. were underwritten "A damnable lie." The Vote of Defence of the King's Person, &c. "viz. 1648." A Bill brought in to disable the Duke to succeed, &c. "Voted like rogues."

Another Evidence.] I went to Edwin's Coffee-house in St Michael's Alley. I saw the Votes, at another table in the room, abused (as has been related.) I asked the woman, "Who had abused the Votes?" Her husband answered, "Somebody has played the rogue with them." Three at the other table were gone, but she said, "That a Minister called for Pen and Ink, and wrote it."

Mr Loe again.] I saw the Minister write upon the Votes, and cros them. I know not the Parson's name, but his brother has a living in Leicestershire, and his name is Joseph Pagett.

Sir Robert Clayton.] There are three or four other Witnesses to testify this, but I would trouble the House with no more.

Sir Nicholas Carew.] I hear that this man is Chaplain to a Nobleman. Pray consider what you do.

Mr Vernon.] This person is Chaplain to Lord Ferrers. The man has been bred up in his life and conversation in good principles. He has been twice with me for Institution and Induction. He has spoken well of the Right of the Subject, &c. and I do believe this will prove a mistake.

Mr

Mr *Harbord.*] I would not have any misunderstanding betwixt the Lords and us, in relation to this man. The Witnesses give no account that he is a Chaplain to this Nobleman, only you have it from some Members. If you send for him in custody, I should be glad to see any Lord justify the man. My Principles are not to advise any thing to create a breach, but I would gladly see such a Nobleman. If you summon the man, it is a Breach of Privilege, though not in custody. It is my opinion that you stand to what you have done. It may be, he will not own himself to be my Lord's Chaplain; and I move to have him sent for in custody.

Colonel *Birch.*] I am far from thinking that any Lord will protect such a criminal person as this, and will not be as willing to prosecute him as you. In some signal way, both to the King and Kingdom, I would take notice of this; and I would have the Serjeant bring him in such a manner as is for your honour; therefore I move, that he may be sent for in custody.

Which was ordered.

In a Grand Committee on the Bill to disable the Duke of York, &c. [Sir *William Pulteney* in the Chair.]

The Preamble was postponed. To the next Paragraph,

Colonel *Titus.*] This matter before you is of great concern, and will have need of all the assistance you can give it. I move that the Gentlemen of the Long Robe may be sent for, and that the Speaker take the Chair to order it.

Which was done accordingly.

In a Grand Committee.

Lord *Russel.*] I find, in the Instructions from the House to the Committee, "That this Bill is only to relate to the Person of the Duke of York;" and I have a Proviso; if you please, I shall offer it, viz. "It is declared, that nothing in this Act shall tend to disable any Person to succeed, &c. other than the Duke of York, in case he shall survive the King, but that the Crown shall descend

descend to such Person, during the life of the Duke of York, as should inherit the same, in case the Duke were dead."

Mr *Finch*.] I would add one more Proviso. It is said, "Nothing in this Act contained, &c." Something may disable the Heirs of the Duke. I would have nothing of Attainder pleaded by any act of the Duke's.

The Proviso passed the Committee.

Mr *Onslow*.] I move for a second addition, "That this Bill may be read twice a year, at the Quarter Sessions, and in the Churches, &c."

Colonel *Titus*.] It is regular to take Instructions in this from the House: This Clause would be proper by way of rider, and may be moved in the House.

Serjeant *Stringer*.] I move that you would add to the Preamble, "That whereas it is notoriously known, that the Duke being the Presumptive Heir to the Crown, &c."

Sir *Thomas Clarges*.] This Motion is of great weight. If the Duke of York be not the Presumptive Heir of the Crown, there is no need of this Bill, for that aggravates the offence, for the Presumptive Heir to conspire against the King's life. If he be Presumptive Heir to the Crown, it is fit so to express it.

The words "Presumptive Heir" were rejected by Vote.

Serjeant *Rigby*.] True Protestants will not go from their Religion because of a Popish Prince, and therefore I am against the Preamble of the Bill.

Lord *Russel*'s Proviso was made part of the Bill.

Mr *Booth*.] I hope you will fill up the Blanks of the Bill. I desire, "That the Bill may commence from the fifth of November last."

Sir *John Bowyer*.] I desire it may commence from the seventeenth of November, which was Queen *Elizabeth*'s birth-day.

Mr *Harbord*.] All our Laws bear date from the first day of the Session of Parliament, and that is a mistake to allege the fifth of November, as a time passed. I love not a time to come in this Bill, for the Yatches are not

yet

yet come back from *Scotland* which attended the Duke thither.

Mr *Onslow's* Proviso passed, viz. "That this be given in charge every Quarter Sessions of the Peace, and to be read at least twice a year, in all Churches and Chapels in the Kingdom of *England* and Dominion of *Wales*."

One desired, "That the Town of *Berwick* upon *Tweed* might be added, because he hath heard say, that the Duke is to be crowned King at *Berwick*."

Colonel *Birch*, on moving for a penalty for the not doing it, said,] It is not to be supposed that any body dares not do it, when the King and Parliament are both of opinion that it ought to be done.

It passed thus: "To be read in all Churches, Chapels, Cathedrals, and Collegiate Churches, the 25th of *December*, being *Christmas-day*, and upon *Easter-day*, yearly."

[The Bill, with the Clauses and Amendments, was ordered to be ingrossed.

Sir *Robert Cann*, on his Petition, was discharged from the *Tower*.]

Tuesday, November 9.

[Mr Secretary *Jenkins* delivered the following Message from his Majesty :

"CHARLES R.

"His Majesty desires this House, as well for the satisfaction of his people as of himself, to expedite such matters as are depending before them, relating to Popery and the Plot ; and would have them rest assured, that all remedies they can tender to his Majesty, conducing to those ends, shall be very acceptable to him, provided they be such as may consist with preserving the Succession of the Crown in its due and legal course of descent."]

Sir *Edward Dering*.] A Motion relating to Privilege has the preference usually of other things. In so many years that I have served in Parliament, I never did make any complaint of Breach of Privilege upon myself. I find a Book that has made a reflection upon me, and that so venomous, that it affects the most sensible part of my heart, my Religion and my Loyalty ; which Book is commonly sold about. The Author of it does not name me (but by description) neither here nor in the Country, but may plainly be apprehended. (*And so he reads the*

passage in the Book.) What follows describes me: The compliment he gives me, of "wise and learned," is like poison boiled in wine, to operate the more violently. A great deal more follows, but this is enough to show I do not complain unnecessarily. How innocent I am of the reflections, I appeal both to you, and to my Country; that in word or deed I never swerved from my Prince nor the Church. In this Libel, I am accused plainly of no less than Popery, and of the worst of crimes, of being "an active and seditious Papist, a Correspondent of the Pope and the Nuntio, and at this time." This is my case to-day, it may be any man's to-morrow. All I move for is, that you will please to examine this, and view those Letters he mentions of *Coleman*, and see if there be the least shadow of what I am scandalized with, and then, if you please, send for the Printer of the Pamphlet.

Sir *John Knight*.] I must give my testimony to *Dering's* zeal for the prosecution of the Plot. He translated those Letters faithfully, he stands now accused of having received from the Internuntio, &c. There is not one word in those Letters that *Dering* had the least hand in correspondence, as the Libel mentions. I move, that the Printer may be sent for."

Mr *Treby*.] Every one that reads the Book may think that I was either active or passive in the printing it. The Book aims at a Report I made the last Parliament; it is broken and imperfect, and nonsense in many places. A share of this calumny is upon me, though I am not named. In the last Parliament, I reported who translated the Letters, as Sir *Edward Dering* and other Gentlemen, signed by them, but in the printed Book they set his name to it, as if he held the correspondence. I have been importuned to communicate those Letters by several Members, but as they have been committed to me in secret, so I have secretly and sacredly kept it, and shall. The Letter translated by Sir *Edward Dering* is a serviceable part, and it is represented in this Book as an obnoxious part. I move, that you will enquire into it.

Sir

Sir *Eliab Harvey.*] We may be all reflected on at this rate. I have had my share of reflection in print (about the *Essex* Election.) Pray send for the Printer.

Sir *George Treby.*] I summoned *Janeway* the Book-feller, who put on a miserable wretched habit, and said "he was very poor." I told him, he must take it for a favour if he had his liberty, and must trace out the original Author. He answered for the present, "He had it from Captain *Tarrington.*" I bad him, at his peril, pursue it farther.

Serjeant *Maynard.*] Let the Printer be sent for in custody, that he may trace out the Author, and then you may send for the Author.

[*Ordered,* That Mr *Richard Janeway* be sent for in custody.]

Mr *Turberville*, at the Bar, gave his Information of the Plot, and against Lord *Stafford*.

Sir *Francis Winnington.*] I hope this House and the Nation will reap benefit by the King's Proclamation of Pardon for such as should make discovery of the Plot, &c. The danger is, that, in these long intermissions of Parliament, the Evidence should expire. Mr *Bedlow* is gone, and I fear it is the endeavour of some men to importune the King to break us, but I hope we shall do something to break them. I would send for Mr *Turberville*, and order him to give in his Information in writing.

[It was delivered in accordingly.]

Mr *Hampden.*] I would have the rest of *Dugdale's* Evidence taken, who, the Town says, is a dying poisoned man, and let all be entered into the Journal.

Mr *Garroway.*] All your Witnesses come in with the greatest hazard imaginable. I would get him his Pardon, and recommend him to the King for some allowance; and have a course taken for his security. If you do not your utmost, you will be deserted, and the Plot defeated.

Mr *Colt.*] One, formerly the King's servant, had a sword drawn upon him: He that drew it, said, "Damn me, we are mistaken; this is not *Dugdale.*" *Dangerfield*

had a sham Pardon, and when you break up, he may be hanged. Hear him first, and then consider them all together.

Mr *Dangerfield*, being called in, then acquainted the House, That he was advised that the Pardon now granted to him by his Majesty is, in some particulars, defective; and humbly desired the House to represent the same to his Majesty.

Mr *Trenchard*.] I will open this matter of *Dangerfield's* Pardon. After *Dangerfield* had discovered the sham Presbyterian Plot, the King ordered the Attorney General to draw his Pardon, who left out the word "Felonies," which was the Outlawry. Mrs *Cellier*, at her Tryal in the *King's-Bench*, moved for a Copy of his Pardon, which was ordered her, and the word "Felony" being left out, my Lord Chief Justice *Scroggs* committed *Dangerfield* upon the Outlawry. He fears he shall be taken upon the same disadvantage again; and therefore humbly desires, "That he may have a Pardon for all Felonies, Outlawries, &c."

Colonel *Titus*.] I move that you would print all the Informations given by them now, or that are by you. I know not how they may be represented when you are sent home.

Sir *Henry Capel*.] It is high time for you to do something in this matter. When men reflect upon your Evidence, it is fit they should be printed. Whatever of Evidence is read here, ought to be entered into the Journal, to guide the Judges.

Mr *Hampden*.] You have one living Witness gone, Mr *Bedlow*, and now you are called upon by the King to expedite the prosecution of the Plot. Pray let it be seen, though you have been dissolved or prorogued, and have had an unhappy effect of Proclamations for Evidence to come in, and though this is still called a sham Plot, let the Evidence be entered into the Journal. It will however have this effect, that the Nation will not lie under an imputation of Injustice, whatever come of it.

Sir

Sir Nicholas Carew.] I would have the Evidence printed. Since we have had so many Prorogations and Dissolutions, let them find no fruit of such things, and I move to have an Act to make Mr *Bedlow's* Testimony as good as if he were alive.

The Speaker.] I hope you will order the perusal of them, before they shall be printed.

Sir Robert Howard.] I would graft something of your sense, by what has been moved. The best way for the security of the Witnesses is what you have entered. Time will kill them as sure as sword or poison. If you will avoid the reproach of hearing little things, as of Trade, Wool, and News; when you see your Witnesses attempted in every corner, some by time, some by assassination, I would prevent these Prorogations. Though Paper-Evidence be not good in Law, yet I would be the more hasty to come to Tryal, when the Evidence goes thus off: I move, therefore, that this Paper-Evidence may be made good, by Act of Parliament. The method of it I have not mature, but would be glad to have it improved, that if they destroy the man, they may not destroy the Evidence; that so, neither time nor force may make you want Evidence. I am almost weary of the Evidence, and would have no Question put, Whether *Sir Edmund-bury Godfrey* be dead, or no. Make such an Act, and I hope you will do a great work for the King and the Protestant Religion, and it may prove the greatest Triple Alliance betwixt the King and the two Houses that can be. However, it will teach, not to render Tryals, and legal Tryals ineffectual (that they desire Tryals to come on) when the Evidence of the dead will be as good as of the living; and then let them do what they can.

Serjeant Maynard.] Every day Evidence will come in; and as we love the honour and safety of the Nation, let us not talk of the Plot, but prosecute the Plot. Either it is Evidence, or not. Can an Act of Parliament make it otherwise? Let us go on and prosecute, and let us

have a day to consider how to prosecute effectually, and go on, now the King, Lords, and Commons have declared it a Plot—They will put in circumstances else that you dare not prosecute them. Therefore I move, that you would go on.

Sir *Thomas Meres.*] If you make an Act that Paper-Evidence shall be good, it will be, as in Chancery, in *perpetuam rei memoriam*. It makes not the Evidence good, but what is said remains whilst that Bill is going on and considering. Let a Committee prepare the Evidence, if they have not already. The scaffolds and state have stood in *Westminster-Hall*, to the shame of us.

Sir *Francis Winnington.*] I will give you an account how things stand. By reason of the shortness of the time, the Committee could not make the Evidence complete, but I hope in a day or two they will perfect it. I expect we shall be soon ready as to the Impeachments; the rest of the Informations are very large, and the Clerks write all night to perfect them. I desire that Mr *Treby's* Report may be ready too, and then we shall not only talk, but do.

[*Ordered*, That an humble Application be made from this House to his Majesty, desiring his Majesty to grant to Mr *Dangerfield* a full and general Pardon of all Treasons, Misprisions of Treason, Felonies, and other Crimes and Misdemeanors by him committed, to the time of his last discovery made to this House, of the Popish Plot.

The same was ordered for Mr *Turberville*.

Ordered, That a Committee be appointed to consider of means to preserve the Evidence of Mr *Bedlow*, and others, that have or shall give Evidence relating to the Popish Plot.

Ordered, That the Committee appointed to inspect the Journals of the two last Parliaments, and to make a Report of their Proceedings, as well relating to the Popish Plot as of the Impeachment against the Lords in the *Tower*, do present their Reports on *Thursday* morning next; and that Mr *Treby* do, at the same time, present, in writing, his Information.]

Wednesday,

Wednesday, November 10.

Debate on the King's Message.

Mr *Montagu*.] I humbly move you, to take into consideration his Majesty's Gracious Message, &c. to return an Answer to it.

Sir *Nicholas Carew* seconds it, and the Message was read. Which see p. 433.

Mr *Boscawen*.] I am sorry to see so great a silence in the House. I will take leave to give you my thoughts of it. One part of the Message, I find, is, "That you would prosecute the Plot." To which the best Answer you can return his Majesty, to show you are in earnest to do it, is to begin with that Lord (Lord *Stafford*) named in the Evidence you have heard at the Bar (*Turberville's*;) the people else will think, there is nothing against the Lords, because you have not, in all this time, proceeded against any of them. But the true reason of that is, because you have been prorogued and dissolved; and Prorogations have been kept on till this time. This may be an Answer to one part of the King's Message, "That you will proceed to the Tryal of Lord *Stafford*." The Answer to the other part of the Message I leave to other Gentlemen.

Mr *Harbord*.] You have read the King's Message; it consists of many parts. I cannot, without trouble of mind, see that you are put upon necessity. There is a passage in the Bible which tells us, "That the children of *Israel* were put to make brick without straw, by *Pharaoh's* Task-masters." The King's Message is, "That you would prosecute the Plot." And withall he repeats his consent in his Speech at the opening of the Parliament to do any thing conducing to that end, &c. "provided it consist with preserving the Succession in the due and legal course of descent." I am sorry I was forced to make use of that comparison, but when all is at stake, no consideration can tie up any man's mouth in this place. I confess, I am naturally warm, and I cannot but speak

warmly in this matter. I appeal to you, if there has been any examination taken relating to the Plot, but that his Royal Highness has been at the bottom of it? I will ask another Question; Whether it is possible to think the King can be safe in a Popish Successor? I will put the Papists upon it to show, that whenever it appeared that the Successor was not of the Religion of the people, whether they have not gone a severer way about than we are doing? *Philip II. of Spain* disposed of his son *Prince Charles*, apprehending him inclined to the Protestant Religion. And now in *Spain*, should they fear a Protestant Successor, I know what would become of him. This is done merely out of necessity of the Kingdom. Some, it may be, had rather sit still in this matter than show themselves; but I cannot but think that the Inquisition will be the reward of all that assert their Religion. And that our enemies may not prevail with the King, let the fault lie at their doors, if Dissolution; the Nation will see that the stop is theirs, and not ours, if it be a Prorogation. I cannot but lament our condition, but I will say nothing indecent or unmannerly of the King's Message. I move, therefore, "That you will appoint a Committee to pen an Answer to the King's Message, as to the first part, "That, in obedience to his command, you are labouring about the prosecution of the Plot, and the Tryal of the Lords in the *Tower*." The eyes of the Nation are upon us, and when you proceed, the Nation will be of opinion that you have done your duty, and it is not your fault that the prosecution of the Lords was not sooner. In order to that, I would bring the Lords to Tryal, to the end the King may see the Nation has reason to say this is a Plot; and that the Nation may see you are in earnest, after they have heard your plain and honest Evidence, which will not only prove the Plot against the King's Person, but that Ladies do endeavour to subvert the Government. (If women have had a hand in it, sure it was near execution.) The first part of the Message I would have answered in such language as becomes you, that the World may see you are preserving the King's Person and the Protestant Religion.

gion. If you move in these steps, it will be impossible to break you.

Mr *Hampden*.] That you may have a good conclusion of this matter, it is necessary that you go in some method. I am for the Motion of proceeding to the Tryal of Lord *Stafford* first; but I think it not seasonable to postpone that Vote to the consideration of the Message, and that Vote comes in as a confirmation to what you will say in the Address. But it seems strange to me, that the King should call upon you to expedite the Prosecution of the Plot, repeated upon a fortnight or three weeks ago. This imputation must be upon you, that you are slack in prosecuting Popery and the Plot. I know not why it has been neglected by Prorogations and Dissolutions; it must be by some advice, though not of ill consequence (as it happens) yet by ill men. But in the interim there was corrupting of Witnesses to destroy the Prosecution of the Plot. It seems strange that any such about the King should give this advice of the Message. You have followed this Plot since you sat; you have been, and are still about it. There needs no other Answer to the King's Message, but to inform his Majesty, "That it is your great interest, as well as duty, to prosecute the Plot." And after this, I would say something of the Prorogations and Dissolutions that have hindered you, as part of the Answer, and "That your endeavour is to confirm the King on his Throne with honour and safety, and that he shall have no cause to repent of his confidence in the Parliament but in those who represent the Government odious to the people." And I move, that you will proceed to the Tryal of Lord *Stafford*.

Colonel *Birch*.] I am as much for what is moved as any man, with the will, mind, and heart of the House to show the King, on all occasions, your intentions to serve him. When the King presses the Prosecution of the Plot again and again, then give the King all satisfaction in what you do. I fear that those about the King get advantage against you. An Address from you in the main will be satisfaction in that point. I would give an account

count of your Reasons so far as parliamtarily you may. You have made already as great steps as you can; but consider, that one of your main Evidences [*Bedlow*] by the long Prorogation, is dead. I would have it appear, that you have in your heart what the King desires, and the Kingdom earnestly presses. You have had it in great care, and great Debates have been to try if it could be made out any way, to satisfy the World of their safety, without this Bill of Exclusion. You were necessitated, when the first and second way would not do, to have recourse to the third. You have not made it the Papists interest that the King should not be taken away by those blood-sucking people, till you pass this Bill of Exclusion; till then, you are never the better, and I would have this in the Address to the King.

Colonel *Titus*.] His Majesty, in his Message, desires "that we should expedite the prosecution of the Plot, &c." I cannot imagine but that both the King and the People are in great impatience till it be done. The King's Person is in danger, and the People under apprehensions. The King may wonder at this delay, and here is a tacit reprehension from him, as if we were wanting on our part. But I think we are wanting to ourselves if we do not give Reasons in our own justification. We all know the hinderers of the prosecution of the Plot, and those about the King have advised these Prorogations and Dissolutions. Were not all the Witnesses ready the last Parliament, and the Members of the Committee for managing the Tryals assigned their several parts? And when it was so, the same Counsels, that have prevailed so long, dissolved that and the last Parliament, when the prosecution of the Plot was at the height. And what have they done since? They have prorogued the Parliament, but to be rid of the Witnesses. The House should take notice, that whoever hindered the sitting of the Parliament, were promoters of the Plot; and that brand, I hope, will be put upon them (by such a Vote) that durst do it, whilst the Kingdom is in this fermentation; and I hope you will put a brand upon any that shall

shall give such Advice for the future. I have taken leave to tell you my thoughts of the King's Message. It has been regularly moved to begin somewhere, and you cannot do better than in trying Lord *Stafford*. And after you have returned Answer to the King, pass such a Vote, "That you will forthwith proceed to the Tryal of Lord *Stafford*." And I wish the Message had done it too. But the last Clause of the Message was brought in like a Proviso, to make all the rest void. The King, through his goodness and excellent nature, is unwilling that you should proceed to exclude his Brother; but I hope, by your Reasons, you will give the King satisfaction, and that without delay you will try the Lords in the *Tower*, and begin with Lord *Stafford*.

Sir *Francis Winnington*.] I would have you well weigh and consider what we are about, lest we run into inconvenience. All honest men, that are not in the Plot, think it fit to prosecute the Plot. What is proposed is rational and parliamentary. But if you consider, if you address, how is it to be made? Something has been said of the King's Message, as if it reproached us that we had not gone so far in the prosecution of the Plot as the King's good inclinations led him. I am glad to see the King is rival with the Parliament, now he sees the necessity of it as well as his subjects. Those who advised the King to search into the Plot, advised not the Prorogations of the Parliament. They are more for foreign Counsels than the Protestant Religion. The King's Letter from *Breda*, before his happy Restoration, told us of the necessity of his governing by Parliaments, and to unite all Protestants, though those Resolutions have been interrupted by violent attacks. It is a thing deplorable to Protestants abroad, when the Plot is not prosecuted; when the Great Council, those that must secure the Nation, are set off for a year and a half. This is not done by honest, good men, but diabolical Counsels, that cut the throat of a Magistrate: And that part of the Message advising us "to prosecute the Plot," comes from those Counsels that prorogued the Parliament so long. When

we

we have a Message from the King, it requires an Answer; and as to the reproach, why we are not so quick as the King expects, we may acquaint the King, "That we see the King will support the old Government and Parliaments, and we have great cause to rejoice at the King's vigorous inclination." Next, we may take notice of the retarding of the Plot, "That it is not from the Parliament, but from ill Counsels." The retarding cannot be from the Parliament, when it is looked upon by the eye of reason. Let us excuse ourselves, and not give countenance to those that have hindered it. No man will make a question of the Plot: But when we are for no Popery, and no arbitrary Government, that sticks in some mens teeth. When we come to particulars, I would not stick upon emergencies, but as the King advises the prosecution of the Plot, I would then show the neglect of the Council, that has been guilty of the Prorogation and Dissolution of the Parliament, and show what we have done about the Plot, and not spend any more precious time on "the *East India Company*," and "*Irish Cattle*," whole mornings, and let the Nation see that the Parliament goes upon their business, and not small things. I am comforted with the King's Message, that it coheres and agrees with his Speech, and the Proclamation, &c. I would put one thing in, that where the matter is of so great importance, I would have the Address drawn upon the Debate of the House. When this is done, I am not against proceeding upon Lord *Stafford's* Tryal. Gentlemen, who consider Methods of Business, remember that when we carried up the Impeachment, the last Parliament, some Letters were missing, and witnesses were an hundred and twenty miles off—But I know not who drove it on, but some formalities hindered our proceeding. It may be said, "That all the Lords were impeached together;" but they are in five Indictments, and in Law are distinct. Now you have fresh Evidence, name no day, only make a general Vote, "That you will proceed," for fear of surprize. Order an Address to the King upon the Debate of the House,

House, and then your proceeding to Lord *Stafford's* Tryal.

Which was accordingly ordered.

Resolved, Nemine contradicente, That this House will proceed in the Prosecution of the Lords in the *Tower*, and will forthwith begin with *William Viscount Stafford*.

Thursday, November 11.

[Sir *William Jones* * reports, from the Committee, the following Address to his Majesty, in Answer to his Message, which was read, and agreed to by the House :

“ We your Majesty’s most loyal and obedient Subjects, the Commons in this present Parliament assembled, having taken into our most serious consideration your Majesty’s gracious Message, brought unto us the ninth day of this instant *November* by Mr Secretary *Jenkins*, do, with all thankfulness, acknowledge your Majesty’s care and goodness in inviting us to expedite such matters as are depending before us, relating to Popery and the Plot; and we do, in all humility, represent it to your Majesty, that we are fully convinced that it is highly incumbent upon us, in discharge both of our duty to your Majesty, as of that great trust reposed in us by those whom we represent, to endeavour, by the most speedy and effectual ways, the suppression of Popery within this your Kingdom, and the bringing to public Justice all such as shall be found guilty of the horrid and damnable Popish Plot : And though the time of our sitting (abating what must necessarily be spent in the chusing and presenting a Speaker, appointing Grand Committees, and in taking the Oaths and Tests enjoined by Act of Parliament) hath not much exceeded a fortnight, yet we have, in this time, not only made a considerable progress in some things, which to us seem, and, when presented to your Majesty in a Parliamentary way, will, we trust, appear to your Majesty to be absolutely necessary for the safety of your Majesty’s Person, the effectual suppression of Popery, and the security of the Religion, Lives, and Estates of your Majesty’s Protestant Subjects, but even in relation to the Tryals of the five Lords, impeached in Parliament, for the execrable Popish Plot, we have so far proceeded, as, we doubt not, but in a short time, we shall be ready for the same : But we cannot, without being unfaithful to your Majesty, and to our Countries, by whom we

* This Address was drawn up under the sanction of Sir *William Jones*, who was that very day introduced into the House, as also appointed of the Committee, and by them placed in the Chair, out of a peculiar compliment. *Ralph.*

are intrusted, omit, upon this occasion, humbly to inform your Majesty, that our difficulties, even as to these Tryals, are much increased by the evil and destructive Counsels of those persons who advised your Majesty, first to the Prorogation, and then to the Dissolution of the last Parliament, at a time when the Commons had taken great pains about, and were prepared for those Tryals; and by the like pernicious Counsels of those who advised the many and long Prorogations of the present Parliament, before the same was permitted to sit; whereby some of the Evidence, which was prepared in the last Parliament, may possibly, during so long an interval, be forgotten; or lost; and some persons, who might probably have come in as Witnesses, are either dead, have been taken off, or may have been discouraged from giving their Evidence: But of one mischievous consequence of those dangerous and unhappy Counsels we are certainly and sadly sensible; namely, that the Testimony of a material Witness against every one of those five Lords, and who could probably have discovered and brought in much other Evidence about the Plot in general, and those Lords in particular, cannot now be given *viva voce*, forasmuch as that Witness is unfortunately dead, between the calling and the sitting of this Parliament.

“ To prevent the like or greater inconveniences for the future, we make it our most humble request to your excellent Majesty, that, as you tender the Safety of your Royal Person, the Security of your loyal Subjects, and the Preservation of the true Protestant Religion, you will not suffer yourself to be prevailed upon by the like Counsels, to do any thing which may occasion, in consequence (though we are assured, never with your Majesty's intention) either the deferring of a full and perfect Discovery and Examination of this most wicked and detestable Plot; or the preventing the Conspirators therein from being brought to speedy and exemplary justice and punishment: And we humbly beseech your Majesty to rest assured, notwithstanding any suggestions which may be made by persons, who, for their own wicked purposes, contrive to create a distrust in your Majesty of your People, that nothing is more in the desires, and shall be more the endeavours, of us your faithful and loyal Commons, than the promoting and advancing of your Majesty's true Happiness and Greatness.”]

The Bill to disable the Duke of York, &c. was read the third time.

Sir *Leoline Jenkins*.] This Bill is of the greatest consequence that can come into Parliament, and withall, you
are

are about to do an act of injustice, great and severe, upon the offender. But by the way I will offer something of the prudential consideration of it, but crave leave to enter my dissent to the justice of it, and the Oath of Allegiance I have taken to his Majesty. I will not offer to your consideration, that this Prince you are about to disable to succeed, &c. is the son of a King, a glorious Martyr, a Prince that has fought your battles, and no crime against him in your eye, but his being perverted to Popery from the Protestant Religion. But the difficulty I struggle against is, so great a desire in the House to pass this Bill. But I cannot satisfy myself in the Justice of this way of proceeding. What is essential Justice to a man in his Place? It is always essential Justice to hear a person before you condemn him. God, though he knew the heart and crimes of *Adam*, did not condemn him before he had heard him. It seems hard to me, that this Law against the Duke should come *ex post facto*, which is not only Banishment, but Disinheritance; a thing strange in our Books of Law, that there should be two punishments for one crime. I observe next, that, by the fundamentals of the Government, how can you make a King by Parliaments? I have always taken it, that the Government had it's original, not from the People, but from God. Religion vests that veneration in us for the Government, that it will be much less, when we see it from the people, and not from God immediately. Several settlements have been made by Act of Parliament, of entail of the Crown, which still do assert the Successor; but no Precedent can be found, where a Prince in proximity of Blood to the Crown has been set aside. I do not know how to reconcile this to the Oath of Allegiance I have taken to the King, and so often repeated, which is always taken in the sense of the Lawgiver and Imposer. The Person is next in Blood to succeed to the Crown, and when I swear Allegiance, it is not only to the King, but "his Heirs and Successors," and there can be no *Interregnum* in our Government. When one King is dead, the other next in Blood must succeed;
and

and who can dispense with my Oath of Allegiance? All the Members of the House make profession of being of the Church of *England*. I am afraid the Church of *England* will receive a great blow by this Bill. The reason of one of the great beauties of the Church of *England* is, that it is safe and secure in the matter of Allegiance to all—Government must be either active or passive. If we are to defend a King made by Act of Parliament, as this Bill imports, that Law will receive a blemish, for we are not to do evil that good may come of it, if there be any good in the Bill! But I know of none, and therefore I move to throw it out.

Sir Robert Markham.] If I could answer my own objections, I would not stand up. Suppose the Duke of York should survive the King, and have a son, is it reason that the Duke's daughter should have the Crown? And suppose the Duke should come back again to the Church of *England*—This gives me the boldness to stand up and make my objections.

Mr Goodwin Wharton*.] I have not yet troubled you since I had the honour to be here, and should not at all upon any other matter. I know my own inabilities, in comparison of many abler and wiser men than myself, but I cannot be silent when I hear the Justice of the House questioned. If those things be true which are suggested in the Bill, the Duke has forfeited his life upon it. Passing this Bill is in order to our security only, and therefore it is just. The Duke has done his utmost endeavour to ruin this Nation, and to destroy us all. It is said, "that the Duke has fought our battles;" but I think he did not when he fell asleep†. It was not fair in the Duke to let our ships fight with the *Dutch*, and to suffer the *French* to stand still. At the great fire, when *London* was burnt, certain men were taken, actually firing houses, and delivered to the Guards, who let them escape, and the Officer that set them at liberty was afterwards one of his

* A younger son of Lord Wharton, and uncle to the late Duke.

† See Vol. I. p. 139.

greatest favourites. It was a sign of a very ill principle in the Duke, that, when the Duke of *Monmouth* was sent into *Scotland* to suppress that Rebellion, it was thought amiss by the Duke, that they were not all destroyed. I do not think that you will chuse a Prince that will not speak truth, to inherit the Crown. When *Bedlow* gave in his Information of the murder of Sir *Edmundbury Godfrey*, and accused one *Le Phaire* to have been one of the murderers, and one of the Queen's servants, I heard the Duke say to those about him, "There was no such man in the World, nor about the Queen." And within three or four days after, there was a Bond found, under his hand. A Prince not to speak truth! I cannot express what to call it. This is plain, that the Duke did hinder the Discovery of the Plot. I do not pretend, upon my memory, to say more particulars; but is such a Prince fit to succeed? Never were worse things done, nor a worse man in betraying the *French* Protestants, by placing the *French* Ambassador behind the hanging when he made some overtures—

Here Lord Castleton interrupted him, to the Orders of the House.] To hear a Prince thus spoken of, I am not able to endure it!

Mr Wharton went on.] It is not my business to make a Speech, but what I know, and think to be real truth, ought to be taken notice of. But since these things are so odious, I will not touch any more upon them now. As for the prudential part of the Bill, an Honourable Person near me (*Jenkins*) told you, "he would not speak to it," and he has kept his word very exactly. And whereas another Member before him objected, "That it was possible the Duke might turn Protestant," I will only answer, that I do not think it possible, that any Person that has been bred up in the Protestant Religion, and hath been weak enough (for so I must call it) to turn Papist, should ever after (in that respect) be wise enough to turn Protestant. And therefore, upon the whole matter, my Motion is, "That the Bill may pass."

Mr Hyde.] I am charmed very much by the Gentleman's reasons that moved first for reading this Bill (*Vernon*) as if he were not Protestant, nor loyal, that was against it. I take myself to be both, but am against it. I offered formerly Expedients instead of the Bill, which I thought might be more conducive to your end. It is not proper to offer any now, but to the whole Bill, why it should not pass. But I shall take notice of a Proviso offered, "That this Bill should extend only to the Duke, &c." I appeal to you, whether that Proviso be clear? If it be not clear, why is it not made clear? If the Duke outlive the King, and the King have Heirs of his Body, whether should it not be expressed, "The Heirs of his Body, lawfully begotten?" If you think it well enough expressed so, or if it be better as I say, I submit it to you. Another thing offered you was the words "Presumptive Heir of the Crown." (*In the other Bill the last Parliament.*) I would know whether the Duke be so, or not? I would be glad to be answered, If the Duke is not, who is? Sure never such a Bill passed before. There were several quarrels betwixt the Houses of *York* and *Lancaster*; but where there was an unquestionable Title, as this of the Duke's is, there cannot be found a Precedent of such a Bill. I take this Bill to be extremely unjust, let the fact the Duke is charged with be what it will. When the King was restored, it was notoriously known, who were the murderers of the late King his Father; they had all their Tryals for it, and were heard. This is said to be a merciful Bill, but it is not a just Bill; but for the satisfaction of my conscience, I had rather go the just, than the merciful way. You may take his head off, upon Tryal, if he be guilty of what he is accused of. I will not dispute the power of King, Lords, and Commons. The Act was made for the Perpetuity of the Parliament—Yet they were dissolved, and gave not their consents to it. Notwithstanding this Bill, Persons of Loyalty will adhere to the Duke if he outlive the King. If this Bill pass, it will be such an Act as the perpetual Parliament, and many a loyal Person, out of that principle of Loyalty

Loyalty and Honesty, will stick to the Duke. These are my Reasons. (I am, I must confess, a little out.) The Bill in itself is unjust, and may yet be of so much the worse consequence than without the Bill. Therefore I am against it.

Sir William Jones *.] I am unfit to speak upon this great matter. I am a Member but of yesterday, and know nothing; but I cannot forbear, upon this occasion, to say something. As the Bill is opened, it is of great importance. I have as much respect for the Duke as any Person, but I must have respect to Religion above all things. This, of respect to the Duke, I will pass over now. But the Question is, Whether a Popish Prince can inherit the Crown of *England* without the loss of all our Laws? It is happy for the Duke, that we go no farther than this Bill. It may be, we might take notice of our insecurity under him, and some other accidents that belong to him, since you proceeded in this Bill. It is absolutely necessary that you pass this Bill; it is far from my nature to inflict any severe punishment; but this Bill is not a punishment without hearing the Duke (as has been alleged.) We do not punish the Duke as a Criminal, but we are preventing the Evil that is likely to befall us from that Religion he professes. *Jenkins* made an Argument against this Bill from the Oath of Allegiance, as if we were perjured in maintaining this Bill. It is the first time I ever heard that those Oaths were to bring in Popery, but to secure us from Popery; and he urges much the point of "lawful Successor to the Crown." But is any man the King's lawful Successor till the King is dead? *Nemo est Heres viventis* is a maxim in *Jenkins's* own Law (the Civil.) But when I take the

* The first time he spoke in Parliament.

Sir William Jones, the late Attorney General, at his first entrance into the House, espoused the Bill with a warmth and vehemence which were not natural to him. And [this person having the fame of being the greatest Lawyer in Eng-

land, and a very wise man; being also known to be very rich, and of a wary or rather timorous nature, made people generally conclude, that the thing was safe and certain, and would at last be agreed on all hands, whatever countenance was made at Court. *Temple's Memoirs.*

Oath of Allegiance, that Oath did never bind to above one Person at a time. I am not obliged to any Allegiance till that Successor comes to act. Therefore I am not at all afraid that this Bill is against the Oath of Allegiance. As to *Hyde's* objection to the form of the Bill, "That it is strange," and that after "the King and Heirs of his Body," there want the words "lawfully begotten," he must know, that, in Law, "the Heirs of his Body," and "the lawful Heirs," are the same thing. But there might be an objection against the words, if they were in. It might be objected, "That the King might have Heirs of his Body, and not lawful;" nothing more plain. As to that of "Presumptive Heir, &c." I never in all my life, in Books, met with such an expression. Sometimes there is mention made of "Heir Apparent," and I wonder any man should call the Duke so, when it may be but a name; but the word "Presumptive" as Heir, it is the first time I ever found it. And as to the other objection, "That this Bill may fall to the ground, because it is like the Act of Perpetuity of the late Long Parliament," there is no reason for that consequence. There is no need of executing this Bill in the King's lifetime. Then only this Law is in force, after the King's decease. One thing farther is objected, "That if this Bill pass the Parliament, there will be a sort of "loyal men," who will not obey this Law:" I have a wrong notion of this word "loyal," if that be so. He is loyal to the King that obeys his Laws; and he is otherwise that does not. This is a thing that may terrify a man that understands not the nature of it. The other objection is not to be answered, because not weighty. It is for the benefit of the King and Protestant Religion that this Bill pass, and I am for it.

Sir *Francis Winnington*.] I find here is an imputation of Injustice upon us, if this Bill pass. This Argument should not come from an *Englishman*, unless from one bred in foreign Countries, where Popery and arbitrary Government are exercised. I would ask any man that does pretend to know History, or the Law of *England*, whether,

whether, from the Conquest, the best security for any Prince's Title has not been by Act of Parliament? You are told, "That the King's Title to the Crown is *Jure divino*." It is not Law, nor Reason. When there was but one King in the World, what became of the King of *England*? From the time of the Conqueror, *William Rufus*, King *Stephen*, and before the questions about the Title of *York* and *Lancaster*, we have several instances of settling the Succession of the Crown by Act of Parliament; and, in *Cotton's* Records, that the Crown has passed, not by Descent, according to lineal Descent, but has been settled as emergencies have required. It has been argued, "That this Act will want Power to be executed:" But will any man assert, that the Parliament has not Power to order, or dispose of the Government? Sometimes they have pared the Prerogative; but the Government is still the same; and I hope our children after us will enjoy it, notwithstanding this unhappy occasion of Exclusion of the Duke. The Marriage of Queen *Mary* with King *Philip* was settled thus by Parliament, That the eldest son of them should be King of *Spain*, the second son such, and the third son such; and in that Statute it was ordered, that King *Philip* should not be King of *England* for life, but during the Queen's life only: And why so? Because this Nation would not be governed by an arbitrary Prince, by *merum Imperium*, which was servitude and slavery; and this Act was still to keep our Liberties, and enacted, that the eldest son was to inherit. That was a great and a wise Parliament, that made it Treason, during Queen *Elizabeth's* life, for any one to say, "That the Parliament cannot set up the Succession, and alter it," and *Præmunire* for ever after. But as to the Injustice of this Bill, should that objection pass silently, it would sound ill abroad if that was not cleared. We are not punishing the Duke for an offence committed. This Bill is not to do a present wrong to the Duke, but to prevent future mischief. If an ancient family might possibly be ruined by the eldest son, it is not unjust to disinherit him. The Parliament does

see, that, if a Popish Prince comes to the Crown, the Kingdom will be ruined; and if the Parliament have not Power to prevent it, it is strange. This is but preventing a mischief. The Duke is but a Subject, though in proximity of Blood to the Crown. If you proceed by way of Impeachment against the Duke, it is not just, unless all things against him are proved. But I would know, whether, as a Grand Jury, we may not pass this Bill, in our own conscience believing, that, else, Religion and the Government will be destroyed. As to what has been said of "the Act of Perpetuity of the Long Parliament," those Acts which are not practicable come to nothing. The King and Parliament is a Civil Marriage, and there cannot be a son without a father. I remember that great case of Sir *Henry Vane*, where he alleged, "That the King could not dissolve the Parliament without their consent." But if the King demise, it is dissolved of itself. As to that point objected, of "the Heirs of the King's Body only lawfully begotten, &c." in Law it is as plain as can be expressed. No man is Heir but the lawful Heir. "Heir Presumptive" is not to be found in Law-Books. The King's eldest son is Prince of *Wales* and Duke of *Cornwall*. "Presumptive" may be Heir, or not Heir; it is not near the Crown. As for the Justice of the Bill; we should not do our duty to our Country, nor Posterity, nor Religion, if we take not care of all these by this Bill, which is much more than the remote Right of any Person to the Crown. Gentlemen that have no children, may not possibly have that warmth in these considerations. It is terrible to me to think they shall be made Slaves and Papists. Let every man lay his hand on his heart, and consider it. If Popery come in, all will be lost. I have respect for the Duke, but there are degrees in things. I hope this Bill will pass as unanimously without doors as here.

Colonel *Legge*.] I humbly crave the liberty that other Members have had, to be heard. Though I am talked of abroad to be a Papist, yet, I thank God, I am none. And for an instance that I am not any, I will not pay that

that respect to *Peter's* Chair, as to *deny my Master* †. I am sorry to hear the unmannerly Speeches of the Duke from a Gentleman (*Wharton*.) Many Laws have been made about the Succession of the Crown, but none without blood and misery. My father was twice condemned to die for asserting the Right of the Crown, and I hope I shall never forsake it. There has been a talk in the world of another Successor than the Duke, in a black Box ‡; but if *Pandora's* Box must be opened, I would have it in my time, not in my childrens, that I may draw my sword to defend the right Heir. Has any happiness ever come to Princes, who came to the Crown, and the lawful Heir thus put by? After *Edward VI*, *Jane Grey* was proclaimed, but it proved unfortunate to her. If my Master the Duke be Popish, God's curse be on him that was the cause of it! I hope you will take a course, that misery may not fall on posterity. I have Church-Lands, and reason to apprehend Popery coming in as other men—I cannot recollect what I had farther to say; but this Bill will set us all together by the ears.

Sir *Henry Capel*.] No objection to this Bill has yet been made, but what has been fully answered formerly: But this is a new Parliament, and so the matter ought to be fully opened. Two objections, now started, remain. The one, "That the Duke has fought the Battles of the Nation." Let the Duke be what he will, he is under misfortunes, to be the Son of a King that hath maintained the Protestant Religion. There has been an acknowledgement for fighting our Battles. The Parliament at *Oxford* did an extraordinary thing; there was Money

† He was Master of the Horse, and Gentleman of the Bed-chamber, to the Duke of York; and afterwards Lord *Dartmouth*.

‡ A report was industriously propagated, that a Marriage had been solemnized, or at least a Contract had passed, between his Majesty, while abroad, and Mrs. *Walters*, otherwise *Barlow*, his Grace of

Monmouth's Mother; that the late Bishop of *Durham* had consigned a writing in a black Box, relating thereto, into the custody of Sir *Gilbert Gerrard*, and that the said writing had been communicated to several persons of distinction, and had fully satisfied them that the fact was so. *Ralph*.

given to the King, but it was for the Duke, in acknowledgement of his service at sea. *Legge* tells you of "Blood and Confusion that may follow this Bill;" but I conceive that this Bill is intended to prevent Blood. What has been may be again. There has been no occasion, since the Protestant Reformation, of this kind. But in *France* *Hen. III.* did but declare the King of *Navarre* rightful Heir to the Crown; yet, because a Protestant King might be in a Popish Country, that Kingdom was not able to bear it, and there was, in the life of the King, a Rebellion, though the King of *Navarre* was able to raise a great Army. You see we have been patient. The Law of the Test against Popery was directed to the Duke, and he laid aside all his Commissions upon it, and, in 1678, you put all the Popish Lords out of that House, for refusing that Test, when it was enjoined them, and this was directed to the Duke. But what are twenty one Lords to be removed out of their House? There is still a majority to pass the Proviso to exempt the Duke from the Test in that House. This shows you, that the Duke is a Papist, and all this is done with peace and quietness; not as in *France*, when the Nation fell into a Civil War upon *Hen. IV.* being declared Successor. At a Court of Justice out of Parliament, the Grand Jury was dismissed, when Evidence was proffered as to the Duke's being a Papist*, when great matters were presented them, when all our safeties were at stake. If Judges may do these things, neither the Laws we make, nor can make, will protect us. If the Duke, now a Subject, have so great an influence in the Courts of Justice, what will he do when he comes to be King! And yet all is quiet; but in *France* it was not so; there was a Rebellion, and *Hen. III.* was killed; and *Hen. IV.*, as he was a Protestant, had no quiet; yet his Character was great as to War, great as King of *Navarre*, had great interest in *Germany*, and with Queen *Elizabeth* in *England*, yet made no shock with that Nation to keep him out. No Protestant can be King in a Popish Country. The *English*

* See p. 364.

are of a quiet nature; but should we be so unfortunate as to have a Popish King, it would bring us all into Confusion and Blood. If this Bill pass not, all the Nation will be in Blood. Therefore pray pass the Bill.

Mr *Finch*.] I am against the Bill, and much more since I heard the explanation of a difficulty. When it was objected, "That this Bill was a punishment to the Duke without hearing him," it was answered, "Not so, because it was in order to the prevention of it." I would know, whether any Gentleman that had an Estate settled upon him would not call this a punishment? To a Prince, this is to him as a Civil Death, and to a man of Honour, and of the Duke's spirit, it is worse than Death. That Act of *Henry VIII.* was as obligatory as any other, and with limitation to another—And yet to affirm, "That a Parliament can be bound up in declaring the Succession," is on the borders of High Treason. When *Edw. IV.* came to the Crown, the several Acts of *Hen. IV.*, *Hen. V.*, and *Hen. VI.*, were made void. That Parliament of *Edw. IV.* looked upon what the other Kings had done in Parliament as invalid; so little Right had those Kings. *Henry VII.*, who had no Right to the Crown, and was of the House of *Lancaster*, was attainted, yet he perfectly refused an Act to reverse his Attainder, so little did he think that fit, who had no Act for his Title. The main thing that I object to, is the last Clause in the Bill. I will not dispute the words of "Presumptive Heir," but there might be other words in the Bill to make it clear, that nothing should prejudice the Heirs of the Duke—It is not said, after "Issue begotten," "Such a day," then it is clear for the Duke's children. This does not necessarily suppose pretensions, but if there be any such setting up a new Title, not to make matters clear, is not becoming the wisdom of Parliament. The Princess of *Orange* is next Heir, if the Duke have no sons. Suppose the Duke survive the King, and this Bill disables the Duke to inherit the Crown, and the Duke have a son, and the Princess of *Orange* be in possession of the Crown five or six years; this son ought to inherit the Crown.

Will

Will you give the Princess of *Orange* such an actual possession of the Crown, and yet a defeisible one too? So that between the Right Line, it may be the cause of infinite confusion. I was in Parliament (though not of the last) when first it was moved to remove the Duke from the King, and then there was no thought to prejudice his Right to the Succession. In the last Parliament, the Duke was called "Presumptive Heir to the Crown" in the Bill of Exclusion, which did denominate him the King's immediate Successor. But in this you do not only exclude the Duke the Succession, but you leave it doubtful to his children. Lay your hands upon your hearts, and I am afraid, that, instead of securing ourselves, we shall gratify our enemies. All Acts mention our King, "King of *France*," in Ceremony; and I am afraid we shall gratify him more yet by our confusion, and putting the Nation into disorder by this Bill. It is the interest of the Papists to divide Protestants, that always some of the Protestants may be in their interest, as the Declaration for Liberty of Conscience proved to do; and the Papist and Protestant were punished by the same Law; and we are going about, by this Bill, to divide Protestants, which will gratify the Papists: Now that we have a Bill depending to unite them, I would not raise scruples, nor magnify them, but from what I have said, I would throw out the Bill.

Mr *Trenchard*.] I am unwilling to trouble you, after so many learned Gentlemen. I shall speak a few words to the Injustice objected, of "laying the Duke aside in the Succession before he be cited to be heard." There is a great difference betwixt putting a man barely out of his Right, and where there is danger that he will involve the Nation in misery. There is no more Injustice in excluding the Duke from the Crown, than in excluding the Popish Lords from the Parliament, and in forfeiting two thirds of their Estates to the King. But when a thing is *pro bono publico*, we ever step over private Rights. The King's Right to the Crown is by Common and Statute Law, and the House of *Lancaster* had
 • three

three Descents by Act of Parliament; and as for *Henry VII.* notwithstanding he married the Heir of the House of *York*, yet he had an Act of Parliament for a special Entail of the Crown. *Henry VIII.* had an Act of Parliament to impower him to dispose of the Crown by his last Will and Testament; which he did, with several restrictions and limitations; and there was an objection to void the Will, because he signed it not with his hand. This Bill will be a security to the King's Person, and a terror to his enemies. There is one instance of a collateral Heir, (39 *Hen. VI.*) who was made Heir Apparent by Act of Parliament, for pacifying the Wars. *Edw. IV.* was declared as Heir Apparent, and the Great Lords swore to him six [times] after *Henry VI.* was deposed. It is neither safe for the King nor Kingdom to do otherwise than this Bill; and if you do not nominate a Successor, he may come to the Crown without Blood. And so may the Bill have an easy passage.

[The Bill passed, and Lord *Ruffel* was sent up with it to the Lords*.]

Friday, November 12.

[Sir *William Jones* was sent up with a Message to the Lords, to acquaint them with the Resolution of this House to proceed to the Tryal of the Lords in the *Tower*, and forthwith begin with *William Viscount Stafford*; and to desire their Lordships to appoint a convenient day for the Tryal of the said *William Viscount Stafford*, &c. And their Lordships accordingly appointed *Tuesday* fortnight for the said Tryal.]

Saturday, November 13.

Mr *Peter Norris* [being called in,] gave an Information in writing, relating to the Popish Plot; which was read at the Clerk's Table †.

* It is worthy remark, that tho' the Exclusion Bill was passed by the Commons, and ordered to the Lords, on *Tuesday Nov. 11.* it was not carried up till *Monday* the 15th following; and there is no other way to account for that demur, after it had been hurried through all the forms of the House with such

rapidity before, than by supposing that this interval was employed by the Party-leaders on both sides in endeavouring to bring the matter to a compromise. Bishop *Burnet* is express as to the fact, but not as to the time. *Ralph.*

† Even Mr Secretary *Jenkins*, for the sins of his Office, became obnoxious

Mr *Paul Foley* *.] This man was sent over into *France*, to bring a Priest who could give evidence to the Plot, and had 20*l.* given him, by Order of Council, for that purpose, and care was taken to poison the Evidence. When *Norris* came back into *England*, he was seized by Secretary *Jenkins's* Order, though he went by Order, and had Money allowed him.

[A Committee was appointed, to receive Informations concerning the Popish Plot, &c. *Norris's* Information was referred to the said Committee.]

Mr *Trenchard* reports, from the Committee to whom the Charge against Sir *George Jeffreys*, Recorder of *London*, was referred, [That the Committee had taken the same into consideration, and had heard the Evidence for and against the said Sir *George Jeffreys*, and had agreed upon a Vote to be reported to the House, &c.]

Lord *Russel*.] It appears plainly that *Jeffreys* † is a Criminal. It is plain he has acted so arbitrarily against the Protestant interest, that, unless some exemplary punishment be inflicted upon him, other offenders may take encouragement. We are sure he has given countenance

noxious to the heat of the times. One *Norris*, a Taylor, had been dispatched to *France*, to bring over one *Dowdal*, a Priest, who was supposed to be in the whole secret of the Plot; and a description of his person, and an account of his errand, part written by one Dr *Day*, and part by one Mr *Sheridan*, having been given, about three weeks or a month after *Norris's* departure, to the Secretary, a letter was written by his order to the Mayor of *Dover*, enjoining him "to take some handsome course to detain the said *Norris* in his return, as also the person or persons that he should bring over with him, till he should receive farther directions concerning him." Accordingly, *Norris* no sooner landed at *Dover* than he was seized and thrown into the common prison; but finding means to get free, presents himself before the Bar of the House of

Commons with his complaint, &c. where it farther appeared, that an Order of Council, dated *July 18*, 1679, was obtained for *Dowdal* to come to *Dover* for a month, that before the said Order could take effect *Dowdal* died, and not without suspicion of a violent death. *Ralph*.

* The younger Brother of one, who, from mean beginnings, had by iron-works raised one of the greatest estates that had been in *England* in one time. He was a learned, though not a practising, Lawyer, and was a man of virtue and good principles, but morose and wilfull; and he had the affectation of passing for a great Patriot, by his constant finding fault with the Government, and keeping up an ill humour and a bad opinion of the Court. *Burnet*. He was twice chosen Speaker, and was Uncle to the first Lord *Foley*.

† This overbearing Lawyer, being

to the Plot, and I desire you will humbly move the King to remove him from his Places, and that you would inflict some exemplary punishment upon him.

Sir *Henry Capel*.] The circumstance of time is of great weight in this matter. The City of *London* is a great and wise body, and will not be disturbed by the notions of a particular man. The time when this was done is much in the case. A little disturbance then was of great weight. This is a disturbance in the City, in their Proceedings according to Law. *Westminster* is a great City too, and the consequence of disturbing these two Cities might have been fatal. The City of *London* embraced the opposition of the Plot with great zeal, and placed their Guards for Defence of the City and Kingdom, and when they proceed according to Law, you are to give them all the countenance you can. The King and Kingdom are beholden to them for their safety. I remember, yesterday, *Fitzgerald*, in his Information, told us, "That the Papiſts were diſcomposed when the Parliament was to ſit, but afterwards they were aſſured they ſhould have no harm, becauſe there would be a difference betwixt the Lords and them." And ſo, according to *Coleman's* Letters, they were to ſit, or not ſit, be prorogued, or not prorogued, as they ſhould ſee cauſe. But that there ſhould be ſuch Members to give this occaſion in the Long Parliament amongſt ourſelves! —If you agree with the Committee in this Vote, we ſhall have no difference with the City, that brave and Proteſtant City; and I hope next there will be no difference betwixt the Lords and us. I would agree with the Committee.

Mr *Booth*.] I agree that Sir *George Jeffreys*, by what I hear from the Report, was a great occaſion of the Pro-

ing afterwards made Lord Chief Juſtice, &c. was notoriously diſtinguiſhed in the ſucceeding Annals of this and the following reign, for his arbitrary proceedings on the Bench, and particularly for his cruelties in the Weſt after the Duke of *Monmouth's* defeat in 1685. At the Revolution, being then Lord Chan-

cellor, having diſguiſed himſelf in a ſailor's habit, in order to eſcape to *Hamburgh*, he was accidentally diſcovered by the mob, and by the Lord Mayor ſent to the *Tower*, where he ſoon after ended his days under great miſery and affliction.

clamation

clamation against petitioning for sitting of the Parliament, which is called "seditious." He is Chief Justice of *Chester*, and I shall speak to his Proceedings there. He has an arbitrary Power to appoint the Assizes. Usually the first Assizes are kept there about *April* or *May*, and the latter about *September*. The first he put off till *July*—So long put off, that we were forced to have no Assizes. At last, in *August* he came; and then went away, and left half the causes untried, and, to mend the matter, he said "there should be no more tried, and the People must go away," their Counsel feed, and their Witnesses brought. We cannot expect Justice from him; besides, this matter he is charged with from the City renders him unfit either to be employed in *Chester* or *London*. It is a dishonour to the King his deportment, to sit up drinking till three or four of the clock in the morning, and next day to appear upon the Bench, with the symptoms of a man that had taken a large dose over night. Several Gentlemen that are Justices can prove, that he said, "He did not know how long he should be Chief Justice, and so did not take the Oaths and Test appointed by Law." Sir *Peter Leiceſter* was by; he would have sworn him, and there was no *Dedimus potestatem*; and if you, Mr Speaker, had not been by, he had sworn him. I hope that you will add to your Vote "his removal from his Place of Chief Justice of *Chester*."

Mr *Wharton*.] The best way to make this Report perfect, is to recommit it. I observe that *Jeffreys's* witnesses were very defective: Some were the very men that tore the Petition for sitting of the Parliament. Another, *Criſp*, was a Serjeant of the Hall. I will not speak of his immoralities, but I would have all the Members of the Common Council, of the House, speak their knowledge of his deportment.

Mr *Vernon*.] I will speak only to his traducing of Petitions. I do not wonder at his insolence in the Courts, when he was so at the Council-Table. He was one that stepped out, to speak his opinion of Petitions to the King, before my Lord Chancellor gave his. Some destroy Petitions rantingly, and some subtilely, &c.

Colonel

Colonel Titus, being called upon to speak, said,] When a Member will speak, or not, he is the best judge of it himself. But here is a Report that refers you to Members of the Common Council for farther information. I move you, that they may give the House satisfaction, how things were carried by *Sir George Jeffreys* in the Common Council.

Sir Robert Clayton.] If any Gentleman desires to be satisfied in any particular thing that was done at the Common Council, I am ready to give him satisfaction.

Colonel Birch.] Consider what the Reporter said, mind the Report of all your Evidences, and it is but what your Members said as Evidence. Your Report will look imperfect, unless you do so.

Sir Patience Ward, Lord Mayor.] Whilst the Petition for sitting of the Parliament was agitating (it was the popular Petition by gathering of hands which several Members of the House subscribed) there was a noise that the Lord Mayor was summoned to the Council upon it, and had some admonition; they apprehending that it was a tumultuous Petition within the Law. The Lord Mayor and Aldermen were summoned to the Council; they consulted the Recorder, the mouth of the City, before they could say any thing. The Recorder mentioned *Crooke's* Reports, and said, "Such Petitioning was bordering upon Treason, and the beginning of Rebellion, and promoting Sedition:" And it had a great effect upon the people that know not, and read not the Law. Five days after, the Proclamation came out, which put great weight upon mens spirits. A Common Council was called, where it was moved to petition the King for sitting of the Parliament, representing the great danger of Religion, &c. The Court being opened, and something said of the Petition, *Sir George Jeffreys*, in a long discourse, mentioned *Crooke's* Reports, but upon some discourse with him, he agreed Petitioning to be lawful; but abundance changed their minds, when the Recorder urged, "That that way of Petitioning did once tend to destroy the King's Person, and might endanger

danger the City Charter." And the terror of such as feared the loss of the Charter, brought that issue of deterring Persons from subscribing the Petition.

Sir *Robert Clayton*.] There were two sorts of Petitioning, the one popular, the other from the Common Council. What were the actions of this Gentleman were in Common Council. The Lord Mayor, &c. were summoned before the King and Council; where my Lord Chancellor told them, "That the King had heard of a Petition both from *London* and the Country, which would prejudice the public peace." He charged them that there should be no Petitioning in *London*, and gave a strict charge against the thing, and the Question being asked "By what Law?" the Recorder produced the Report out of *Crooke*, "That it was a crime punishable at discretion, and that it bordered upon Treason." The Recorder did declare it lawful at the Common Council, but did obstruct it all he could.

Mr *Pilkington*.] There has been something omitted, which I shall crave leave to give you an account of. The Recorder, in the Common Council, spoke to this effect: "Gentlemen, you have heard the King's Proclamation; take notice, if you displease the King by Petitioning, and shorten the King's Life thereby, your Charter and all things will be taken from you, and it may be the ruin of you and your posterity." Many have been deterred by his manner of pleading and ranting in the City Court—I take him to be a common enemy to mankind, and I hope you will use him accordingly.

Sir *Thomas Player*.] I am commanded to inform you of this matter; and though some persons may look upon it as an extraordinary severity from me, who formerly have had an extraordinary friendship for this Gentleman, that I should now expose him, and let the World see his extravagances, yet, for the service of *England*, farewell all particular friendship! At the Privy Council I was not, but at the Common Council I was. It was remarked, that his forwardness in the Council, in giving his opinion in the Proclamation, gave it that forward birth. Though
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for his Speech in Common Council (of an hour long) some men did admire him, yet this it was, to justify the Court. Several Members of the Common Council made it appear, that it was absolutely necessary that the Parliament should meet for the preservation of the King's Person, our Liberties and Lives. Having asserted this, I think no man had the impudence to say the contrary. But it may be, *Jeffreys* hoped to be a Privy Counsellor, or to get a Chief Justice's Place. We Citizens, next to the security of the King, are fond of our Charter and Liberties, and are fond of the Chamber of *London*, and of the protection of Orphans; and to make sure work, and confirm all the City in the danger of Petitioning, *Jeffreys* tells them, "They were like to lose their Charter, and all their Privileges." It was a damnable way in *Jeffreys* to use towards the King, to represent his People to him as seditious, &c. and so good a People as those of *London*! And to tell them, "that if they did petition, they were likely to have no Parliament, but if they did not, probably they might!" This Gentleman said not, it was unlawful to petition, &c. but would have us stay till our throats be cut, and then we may. But the Common Council did carry the Petition, and made the Court of Aldermen part with their Prerogative, and poll with the Commons, and then they carried it. As to *Jeffreys's* punishment, I leave him to the mercy of the House.

Sir *William Jones*.] I am not at all against naming a Committee, &c. When the whole matter shall be before you, it is then fittest to agree with the Committee. But I would go farther. I had not the honour to be of the House, to be present at this Committee, but for this matter of *Jeffreys's* opposing Petitioning, &c. the fact is made out. For my part, I do think that those who go about to stop Petitioning, go about to bring a Civil War into the Nation. There is no Government that ties up mens tongues, especially when their desires are according to Law, but will soon be troubled with their hands; therefore it is very dangerous to stop the People's mouths. This matter of

Petitioning is condemned (it seems) because of gathering of hands. *Jeffreys* was of opinion in the Common Council, that it was lawful to petition, &c. but before the King and Council he held it unlawful. This seems to me to take away the very Liberty of *Englishmen*. If it be unlawful to gather hands, then but one man must come and petition at a time, and this is to render it ineffectual; and then it will be reasonable to say, "Here is but one man's hand to the Petition; you are too saucy, go home." If men, under pretence of Petitioning, will come in a body of twenty thousand men, therefore it is not permitted; but this of gathering of hands is a middle way, and we must acquaint one another with our intentions, else there is no way of Petitioning. This is to show the dangerous consequence of opposing Petitioning. This Gentleman is of the Profession of the Law—I do not know, as to my notion of the Recorder of *London's* Place, that it is his office to terrify men, by saying, "Let me see their faces that vote for Petitioning." And what he has done has not been only in his sphere as Recorder, but when he comes to attend the King and Council, he intrudes his opinion of Petitioning. I never did presume, in the Office I had the honour to be in, (Attorney General,) to tell the King what was Law, without his asking me the question. This is an extraordinary thing; it seems, he takes Petitioning to be Law at the Common Council, and unlawful before the King and Council. I observe, that the Proclamation tells us, "That by the common known Law of the Nation, Petitioning is unlawful." We all know that the King, by reason of his great occasions, does not descend to enquire into the Law, and these men, that tell the King otherwise, pretend to know the Law very well. *Jeffreys*, at the Tryal of a man indicted for gathering hands to the Petition, when the Jury found the man guilty, said, "He would do as the Jury had done," and got a Jury sworn for the purpose. And it was an extraordinary way, that a man not concerned should challenge one of the Jury, that tore another

ther Petition, and *Jeffreys* gave the man money to drink; and “would, upon occasion, (as he said) be a Counsel for him *gratis*.” This shows, as much as can be, his inclination and greatest endeavour to obstruct Petitioning, &c. Should a man, out of his Office, do this that *Jeffreys* at the Council, &c.—It shows the greatest animosity. I am sorry to hear such things as I have heard to-day of this Gentleman; and having spoken thus much, I shall now speak to the matter of agreeing with your Committee. I take it, the Committee has examined the matter of fact, and all the answer you can expect, is, whether *Jeffreys* be guilty, or not guilty. I hope now, that your Vote of agreeing with the Committee will be at least as large upon *Jeffreys*, as your Vote against the hinderers of Petitioning, and if the House proceed not upon him, your Vote will be lame. As to the addressing the King to remove him from his Office of Chief Justice of *Chester*, do it not till there be sufficient proof against him of what he is charged with there—This person has a great Office in that County, as much as Chief Justice of *England* there. I would only acquaint you, that I am afraid that his Office is for life; but whether so or not so, I would address the King, that he may not exercise the Office of Recorder; and whether a person so guilty be an Officer fit for them, I appeal to the Lord Mayor and Aldermen.

Sir *Francis Winnington*.] I know not one particular thing that tends more to the dissolution of the being of Parliaments, than this of murdering Petitions. Evils are increased by intermission of Parliament. It is on Record, that former Kings have chid their Subjects for not petitioning for redress of their Grievances. Sir *Samuel Barnardiston*’s case and this are of the same thread. If false Returns are made of Members, and not petition!—What tends more to the suppression of Parliaments than this? I do not my duty, if I take no notice of this. This of the Proclamation against Petitioning, is of a very extraordinary nature. What is our duty, is called “seditious;” and what is plain Law, the Proclamation calls “against

the known Laws of the Land." The Proclamation is of a strange style, and I have often wondered at it. This Gentleman at the Council-Table taking upon him answering matter of Law, without asking him any Question, shows the officious spirit of the man against Petitioning. Mr *Arnold* promoted Petitioning in his Country, and was sent for to the Council-Board, and had an accusation as if he was an Offender; like those that first discovered the *Irish* Plot, the men were clapped up for their pains; and, you may remember, Mr *Oates* was accused of buggery, and the countenance that it had. When Mr *Arnold* came to the Council, he answered every point. Said one Lord, "He printed a Petition." Said another Lord, "Say you so? then he promoted Petitioning." And when all Mr *Arnold's* accusations came to an hearing, this of Petitioning was fastened upon him as a monstrous thing. I would have the World see you have a just resentment of this thing; that men should be troubled by summons to the Council-Table, and then sent home again. As for the Case mentioned in *Crooke's Reports*, it is an extrajudicial thing. As the Ship-money was a Star-Chamber Case, so this Judgment against Petitions has been exploded, as an erroneous opinion, out of Law Books. I believe, the Proclamation came out in the Metropolis, *London*, to affright the People from Petitioning by fear of a *Quo Warranto* against their Charter, and of a Judgment against the City about the Water-Bailiff: As much as to say, "If you will not petition the King, you shall have that Right given;" yet judged theirs by Law this Term. But the City (it seems) was too great a body to be deterred from Petitioning by that, if it were so. I propose this: *Jeffreys* is Chief Justice of *Chester*, where mens lives are concerned. He is likewise of the King's Council, and that is a great Trust. If you address to remove him from the Office of a Judge, he is of the King's Council too, and not fit to advise in these things, he has given so ill testimony of his Principles. If you thus address what sense you have of his behaviour, notwithstanding all his mettle he will give up his Recorder's Place. When you put the Question to agree with
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the Committee upon that, you may make your Address to the King, and desire the Members that serve for the City to signify to the Court of Aldermen your opinion, and they will be sure to get a Recorder that shall keep Laws, and not break them.

Colonel *Titus*.] I will not go about to extenuate this Offence of the Recorder. By the same reason that men may not petition for sitting of the Parliament, they may not petition for redress of Grievances. He affirmed, "That it was unlawful to petition for the Parliament, &c." As much as to say, "It is unlawful to petition for their Liberties, and preservation of their Liberties." If this be so, it is no matter what of it is lawful. There are calm times, when mens minds are not disturbed, and then it is not so necessary to petition; but this was a time when there was no way of Redress of fears of Popery, &c. but by Parliament. Who could pursue the Plot but the Parliament? There was that fermentation in mens minds by the disturbance of the time—But was this for a Country Gentleman to do, that minds his sports? He should not be troubled with the Government. This *Jeffreys* was the Gentleman, who, by his knowlege in the Law, should have instructed others. For a Great Man in Authority, it is not only a fault for want of knowlege, but this man knew the Law. *If the blind lead the blind, and both fall into the ditch*, no-body wonders at it: But when a man has his eyes in his head, to mislead others!—Here is so much to condemn him, and nothing to excuse what he has done. If a man will step into Places by subverting the Law, let him be made an example. See your Vote, and it is all the justice in the World to apply it to this man.

Sir *William Hickman*.] You must come to the Question, Whether agree, or not agree, with the Committee. The Evidence is fit to be known, and then it is proper to aggravate the offence.

Sir *Christopher Musgrave*.] Before you come to censure this Gentleman, you are to put the Question, Whether agree, or not agree, with your Committee; and then

it is proper for the Gentleman to come, to have your censure upon him.

Resolved, That this House doth agree with the Committee, That Sir *George Jeffreys*, by traducing and obstructing Petitioning for the sitting of this Parliament, hath betrayed the Rights of the Subject.

Sir *John Trevor*.] Having agreed with your Committee, and being now about to pass censure upon *Jeffreys*, if I did think he was either the adviser, or was of opinion that Petitioning for sitting of the Parliament was unlawful, I would lay my hand upon him as soon as any man in *England*. I will not go about to contradict the Evidence, but if all was laid before you, I believe you will not be of the opinion that he was the adviser. Nothing is a greater offence, and there cannot be a greater crime, than for the King's Counsel to give advice contrary to their knowledge, to destroy King and People. A man that is accused of a great many crimes, and can wipe off some of them, is happy. As to that part of the Charge relating to Juries, that Evidence was heard on both sides, and I do not remember that it was reported. I take it, he stands fair as to his carriage relating to the Libel, and the Rape. This Gentleman has been Recorder of *London* many years, and it is a place of great Authority, and it is his happiness that there is no Evidence against him that he ever packed a Jury, or has gone about to clear a person nocent. He has been Counsel for the King when persons were indicted for the horrid Plot, and behaved himself worthily; and if I may say he was too forward in prosecuting, if so, that may make some atonement for his forwardness in other matters. His carriage in this matter of Petitioning was an error in his Judgment, in that he declared it at that time not expedient. He is a Gentleman that has raised himself by his Profession. There is nothing said that he has done wrong to any person in Estate or Life. He said, "he would submit his Case to the Judgment of the House," and I hope in some measure you will take pity of him.

Mr

Mr *Boscawen*.] *Trevor* has spoken in favour of this Gentleman. I will compare nothing of his actions, but I think he is like the Cow that has given a good pail of milk, and kicked it down again. The crime he is charged with is since the Tryal of the persons for the Plot, and in that he was pretty well disposed. I look upon his saying, "That it was not unlawful to petition," to be as an art he used to bring men off, by persuading them it was not expedient. He has brought in an Authority out of *Crooke's Reports*, of a Judgment in the Star-Chamber, which was not Law, to persuade the King that all such Petitioning was next to Rebellion, and Sedition. I think the Judgment proposed does not exceed his crime, and pray put that into your Vote, "That he gave an opinion officiously in the Council, when he was neither required by the Council, nor the Court of Aldermen, to give his opinion." I would not only punish him for what he has done, but prevent the like for the future. I would address the King, to put him out of his Commission of Chief Justice of *Chester*, and recommend it to the City, to chuse them another Recorder.

Sir *Robert Clayton*.] What he is accused of, is, "That he declared that the popular way of Petitioning, by getting hands, was against Law." But what sticks with me is his officiousness at the Council-Table.

Ordered, That an humble Address be made to his Majesty, to remove Sir *George Jeffreys* out of all public Offices: [And that this Vote be communicated, by the City Members, to the Court of Aldermen, &c.]

Monday, November 15.

[Mr Secretary *Jenkins* delivered the following Message from his Majesty :

"CHARLES R.

"His Majesty did, in his Speech, at the opening of this Session, desire the advice and assistance of his Parliament in relation to *Tangier* : The condition and importance of the Place obliges his Majesty to put this House in mind again, that here lies upon them for the support of it, without which it cannot be much longer preserved : His Majesty does therefore very earnestly recommend

Tangier again to the due and speedy consideration and care of this House*."

It was ordered to be taken into consideration on *Wednesday*.]

An ingrossed Bill, from the Lords, for the better regulating the Tryal of Peers of *England*, was read a second time.

Sir *Thomas Clarges*.] I wish, that, as this way of Tryal is hard for the Lords, as it is now, so I would have something for the Commons in this Bill. I would have something to secure the Commons Appeal against a Peer, for it is hard to come by combat and other formalities. I would have a Clause to make Appeals more easily come by.

Mr *Paul Foley*.] In all Appeals against a Nobleman, he must come to be tried by his Peers first. We ought to take care that this Act extend not to Appeals, but that they may be come at more easily. But there is something more; since the Impeachments of the Lords in the *Tower*, several points have been agreed to us, as, "when a Peer is impeached by the Commons, he ought to be secured." I would have that in the Bill. "And being impeached, not tryable but in Parliament." If that pass not in the Bill, the Lords in the *Tower* may be tried out of Parliament. I would have that taken care of.

* On the day the Exclusion-Bill had been left with the Lords, his Majesty had by Message demanded a Supply for *Tangier*, without which, it was urged, that Place could not be much longer preserved. There was some truth in this, and some fallacy, as there is generally in all demands of the like nature. *Tangier* was indeed in some distress, but the King was in more, and whatever was given in relief of the first, would also have contributed to the relief of the last. But, on the other hand, the Commons very well knew they had not been assembled to make fine

Speeches in the House, or render themselves popular at the expence of the Royal Family. Like the fine Lady in the Comedy, there was but one thing they could do to pleasure the Court, which was, giving Money, and that being once done, they also knew, that an instant dismissal would follow; there was therefore no pretence, how plausible soever, that the King could use, to show the necessity and reasonableness of his having recourse to the benevolence of his Subjects, but what they were prepared with pretences as plausible to evade and refuse. *Ralph*.

Sir

Sir Henry Ford.] The Bill has more in it than appears in the face of it. If the Lords level themselves with the Commons, they may have Challenges. I thank God, but few Tryals of Peers have been since the King came in, and but few before in the late King's time. I would have the Lords maintain their Honour at the height, but I am afraid that, by this Bill, a Lord found guilty may escape. Fifty are to be summoned upon a Tryal, and thirty five are to appear, and the Lord tryed may have Challenge. If several Peers are to be tryed, and if every one challenges twelve, you will have no Jury; there will not be Peers enough to try them. I would consider of it.

Colonel Titus.] The end of the Lords Bill is, that they may have an equal and indifferent way of Tryal. We know how the Peers are appointed that are to try; by the Lord Steward, &c. and it may be when a Lord is committed, if it be for the advantage of the Ministers, he will have a very favourable Jury, that he may commit more Crimes. When a Lord is to be tryed in Parliament, I find it is wonderfully troublesome; if he have voted with the Commons in any good Bill, he not only will be punished for the Crimes he has committed, but for what he may do hereafter; therefore the Lords have great reason for such a Bill. But let us not be more careful of the Lords than they are of themselves, and I would not make them less humble, by denying them Challenges, than they will make themselves. I mean, that you will commit the Bill upon the Debate.

Mr Hampden.] I am not against offering Clauses to make the Lords Vote of Commitment of a Peer impeached, &c. part of the Bill. But I think that Vote is not revokable. The Lords have made a Declaration of the Right of the Commons, which the Commons have always asserted. I am willing to put as many locks upon the Bill as may be, but I hope it is taken for granted that the Lords have made a Declaration of the Right of the Commons in that point, and I think it is irrevokable already.

Mr

Mr *Sacheverell*.] I think that the Declaration of the Lords is irrevokable. But I remember that a Lord at a Conference did acquaint you, "That the Commons had gained that point of securing a Lord impeached, &c." But the Commons looked upon it as no point gained, and no more than what was their Right before. My Lord Privy Seal opened the Conference, "That this matter was only agreed, when Special Matter in the Accusation was assigned;" and all the Lords at the Conference did declare, that my Lord Privy Seal had no authority from the Lords for that point of Special Matter. But I find it not entered into the Lords Journal; therefore I move to have a declarative Clause, but still retaining it as your Right already.

Mr *Dering*.] I move that the Bill may be temporary. If it be a good Bill, you may continue it.

Sir *John Trevor*.] Since this Bill is for indifferent Justice for Tryal of the Peers, I move to have it perpetual, and I would not have that any part of the Debate to commit the Bill upon.

[The Bill was ordered to be committed.]

On the Petition of the Bailiff of *Haslemere*, to be released from his Confinement, for making a false Return.

Mr *Harbord*.] There was a Project, in the late Long Parliament, that, in case the King would think fit that 100,000*l.* might be sprinkled in some Boroughs, and so put Gentlemen to expences to be chosen, they might have a Parliament to their mind. When a Gentleman comes into a Borough a stranger, and is there chosen in the manner that has been at *Haslemere*, if you do not discountenance such practices, you are lost, and it may be, this is one of the last practices you will be put upon before you are sent home. This being put in practice here, I would set a mark upon this now, to free you from slavery hereafter. This man may be an object of your mercy, being poor; but it seems there was some practice to indemnify this man with one Mr *Gresham*, and the Sheriff affixed two Indentures to the Return, and he ought to make

make but one. If one Indenture be made of a Return, and another by way of Certificate, there is no fault committed. Let these Gentlemen tell the Bailiff, "That the House is inclinable to be merciful to him, if he will tell who set him at work;" that you may see what has been the practice to overthrow your Liberties by such Returns. But if he will not declare it, let him lie by it.

Colonel *Birch*.] I would have the Bailiff here now to declare who set him at work to make this Return. These practices, else, will be soon played upon you again.

[The Bailiff was ordered to be brought to the Bar the next day.]

On carrying up the Bill to exclude the Duke of *York*.

Mr *Hampden*.] After you have appointed the Tryal of Lord *Stafford*, and the Prosecution of the Plot, is there any person who can hinder your Evidence, or stifle it? The reason given, for not carrying the Bill up to the Lords, is, "That there is such irrefragable Evidence of the Duke's being in the Plot, as will induce the Lords to pass the Bill." They lay this, as a great weight to stop it. If they have good Information that there is Evidence, and will take it upon themselves to make it appear, I shall be against the going up of the Bill. I would have no mistake; if they will say that the Evidence is considerable, and not a light Information, I am for staying the Bill.

Colonel *Titus*.] The Gentleman may be imposed upon in the Evidence. I would consider this Bill, not only for within Doors, but without. They will say, we have done something to be repented of, if we carry not up the Bill; but if these Gentlemen will say there is considerable Evidence yet remaining, I am for staying the Bill; but if Rumour, or Common Fame only, I would carry up the Bill.

Sir *John Holman*.] I hear it, with a sad heart. Pray send for Sir *William Waller*, and he will tell you what he knows.

Sir

Sir Henry Capel.] If Sir William Waller be at the Door, and have any thing to say to inform you of importance, pray call him in. It seems to stand upon this point, that Evidence will come in betwixt this and *Thursday*. The Lords always encourage Evidence; and as the Lords do, so should we, and I hope the Lords will not precipitate any thing of the Bill, if there be farther Evidence, and that the Lords will use the prudentest way.

Colonel Birch.] I would look on both sides this business. If you stay the Bill going up to the Lords, you must have some grounds from Evidence the better to carry on the Bill there. I am one of those that believe we never had had any such Evidence of the Plot as has come in, had it not been for this Bill, and it is that which gives the encouragement (for they are gallant Fellows that dare come in.) If this Bill miscarry to-day in the Lords House, the Evidence will dwindle to nothing. I never knew it denied upon Reason, but that the carrying up a Bill may be deferred.

Mr Harbord.] The matter is short. We must trust the King, or he us. If we stay till *Wednesday*, that the Debate of *Tangier* may be over, and send the Bill up on *Thursday*, then comes on the Debate of Money. I am for the King to trust us, for I will be bold to say, we have had such a Succession of Ministers and Crimes, since the Breach of the Triple League, as never was in story. The single reason for deferring the carrying up this Bill to the Lords till *Thursday*, is, "That the business of *Tangier* is to be debated, and that the want of Money for *Tangier* will induce the King to pass the Bill the more easily." Will the King have the Money-Bill thrown out of the Lords House, when he will *ipso facto* see that he will have no Money for *Tangier*?

Mr Colt.] I have seen that Evidence which Sir William Waller can produce, and it is but a Paper of great things, and no name to it. I believe it is but a sham.

Sir Henry Capel.] The Bill was ordered to be carried up, and no man can speak against it without leave.

The

The Speaker.] So far you have voted already, "That Lord *Ruffel* should carry up the Bill;" and now you had better go by the general voice of the House than by a Question; but I submit it to you.

Sir *Christopher Musgrave*.] You have been regular in the Debate; but the Question is, "Whether the Bill shall be now ordered to be carried up?" Unless a time has been appointed, there may be a Question upon it, and that is the Order of the House.

The Bill was carried up without a Question*.

* The Exclusion-Bill was quickly brought up to the House of Lords. The Earls of *Essex* and *Shaftsbury* argued most for it; and the Earl of *Halifax* was the champion on the other side. He gained great honour in the Debate; and had a visible superiority to Lord *Shaftsbury* in the opinion of the whole House: And that was to him triumph enough. In conclusion, the Bill was thrown out upon the first reading. The Country Party brought it nearer an equality than was imagined they could do, considering the King's earnestness in it, and that the whole Bench of Bishops [except three] was against it. *Burnet*.

Till eleven o' clock at night the rage of altercation and the lust of superiority kept up the Contest, the King being present all the while, and the whole House of Commons attending, who had adjourned their own Proceedings to indulge their curiosity in observing the progress and event of this. *Ralph*.

This was one of the greatest Days ever known in the House of

Lords, with regard to the importance of the business they had in hand, which concerned no less than the lineal Succession to the Crown. Great was the Debate, and great were the Speakers: The chief of those for the Bill was the Earl of *Shaftsbury*; the chief of those against it, Lord *Halifax*. It was matter of surprize that the latter should appear at the head of an Opposition to the former, where they were wont always to draw together [Sir John, it seems, was ignorant of the animosity between these Lords] but the Business in agitation was against Lord *Halifax*'s judgment, and therefore he opposed it with vigour; and being a man of the clearest head, finest wit, and fairest eloquence, he made so powerful a Defence, that he alone, so all confessed, influenced the House, and persuaded them to throw out the Bill. *Reresby*.

The Numbers on the Division were 63 to 30. A Protest was entered on the occasion by Lord *Crew*.